

Residential Tenancies Tribunal

Application 2023-1071-NL
2023-1194-NL

Decision 23-1071-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 19-February-2024 at about 9 am via teleconference.
2. The applicant, [REDACTED] appeared via teleconference to represent himself and his wife, [REDACTED] They are hereinafter referred to as the tenants.
3. The respondent, [REDACTED] hereinafter referred to as the landlord, also attended via teleconference.

Issues before the Tribunal

4. Should the landlord's claim for unpaid rent succeed?
5. Should the landlord's claim for damages succeed?
6. Should the landlord's claim for unpaid utilities succeed?
7. What is the proper disposition of the security deposit?

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

Issue 1: Unpaid Rent

Landlord's Position

9. The landlord claims the tenant owes him \$1300 in unpaid rent for the month of November 2023. He says the tenant provided insufficient notice of termination, providing only two day's verbal notice on or about the 29-October-2023. He points out that the lease agreement (LL#1) is for a fixed term, which requires two month's written notice.

Tenant's Position

10. The tenant did not dispute that he had given insufficient notice. However, he alleged that the landlord was not entitled to rent for the month of November as he had already found new tenants on or about 8-November-2023.

Analysis

11. A landlord is entitled under the law to two months' notice in a fixed term lease agreement. However, lack of notice does not automatically give the landlord the right to recover rent from the tenant. A landlord has a legal duty to attempt to mitigate his losses. In this case, the landlord did so, and immediately began to look for new tenants.
12. According to the tenant, during his walk to work from his new premises, he is able to see the outside of the rental property. He testified that he knows it was occupied by 8-November-2023 as lights were on and vehicles were in the drive. The landlord denied this, and said the new tenants moved in only at the end of the month. He suggested the tenant saw his wife's vehicle, as she was cleaning the apartment and readying it for the new tenants. The tenant disputed this, saying he knows what vehicle the landlord's wife drives, and that there were consistently three vehicles parked at the property. Considering the evidence in its entirety, I find on a balance of probabilities that the tenant's account is accurate, and the landlord had new tenants by 8-November-2023.
13. Regardless of when the new lease began, a landlord cannot collect rent from a previous tenant while new tenants are occupying the property. Having successfully mitigated his losses or having the opportunity to do so, he cannot "double dip" on rent, nor require the previous tenant pay rent for the new one.
14. The landlord is entitled to rent for each day of November before 8-November-2023. The proper formula for calculating daily rent is the monthly rent multiplied by the 12 months of the year, divided by 365 days. In this case, the monthly rent of \$1300 reduces to a daily rate of $\$1300 * (12/365) = \42.74 a day. Multiplying this by 7 gives a total of \$299.18.

Issue 2: Damages

15. The landlord claims for \$100 in cleaning costs as, he says, the tenant left the premises in an unclean condition. The tenant disputes this. The landlord provided no photographic or documentary evidence showing that the premises were left in an unclean state. The onus is on the landlord to establish the basis for the damages on a balance of probabilities. The landlord here has not done so and so the claim fails.

Issue 3: Unpaid Utilities

16. The landlord claims for \$250.00 in unpaid utilities. The landlord said this number was an estimate of an average month's utility bill. No copies of any bill were provided. All that was provided in supporting documentation was LL#2, a letter from Newfoundland Power Inc. alerting the landlord that the tenant had requested to have the account switched to

his name. The landlord has failed to provide adequate evidence to support a finding and his claim therefore fails.

Issue 4: Security Deposit

17. The landlord is owed money and may therefore apply the security deposit against same. The security deposit in this case was agreed by both parties to be \$900. The remainder of the security deposit must be returned to the tenant.

Decision

18. The landlord's claim for unpaid rent succeeds in the amount of \$299.18.
19. The landlord's claim for damages fails.
20. The landlord's claim for unpaid utilities fails.
21. The landlord may retain \$299.18 of the security deposit. The rest must be returned to the tenant.

Summary of Decision

22. The landlord shall pay to the tenant \$600.82 as follows:

Unpaid Rent.....	\$299.18
Less Security Deposit....-	(\$900.00)

Total.....	\$600.82
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21-February-2024

Date

[Redacted]
Seren Cahill
Residential Tenancies Office