

Residential Tenancies Tribunal

Application 2023-1147-NL
Application 2023-1180-NL

Decision 23-1147-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 10-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents and counter applicants, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as “the tenants” attended by teleconference.

Preliminary Matters

4. The landlord testified that she served the tenants with the notice of hearing electronically by email on 13-December-2023. The respondents confirmed receiving the documents on that date. The respondents and counter applicants submitted an affidavit stating that they served the landlord electronically by email on 5-January-2024 (TT#1). The landlord confirmed receiving the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written fixed rental agreement whereby the tenants rented a room in a boarding house which commenced on 1-September-2023. The tenants vacated the premises on 30-November-2023. Rent was \$900.00 per month due on the first of each month. A security deposit of \$675.00 was paid on 18-August-2023 and is in the landlord’s possession.
6. The landlord amended her application to increase utilities paid from \$655.63 as per application to \$691.18. The landlord is also seeking hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Validity of termination notice
 - b. Rent paid \$1800.00
 - c. Utilities paid \$691.18

- d. Security Deposit applied against monies owed \$675.00
 - e. Hearing expenses \$20.00
8. The tenants are seeking:
- a. Refund of security deposit \$675.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the Residential Tenancies Act, 2018.
10. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 10: Statutory conditions and Section 23: Notice where landlord contravenes peaceful enjoyment and reasonable privacy. Also, relevant and considered is the following section of the *Residential Tenancies Policy Manual*: Section 12-1: Recovery of Fees.

Issue # 1: Validity of Termination Notice

Relevant Submission

11. The landlord submitted a copy of a termination notice received from the tenants dated 21-November-2023 to vacate the premises on 30-November-2023 under Section 23 of the *Residential Tenancies Act, 2018* (LL#1).

Landlord's Position

12. The landlord stated that she received a termination notice from the tenants on 21-November- 2023 with notice that they will be vacating the premises on 30-November-2023 under Section 23 of the *Act*. The landlord stated that she had entered into a mutual agreement with the tenants to discontinue the tenancy and that she was expecting the tenants to stay until a time that worked best for both parties. The landlord stated that she understood that the tenants would most likely be staying until the end of January or the beginning of February 2024. The landlord stated that she was surprised to receive a termination notice with cause after they both mutually agreed to terminate the tenancy.

Tenant's Position

13. The tenants testified that they had grounds to give the termination notice under Section 23 of the *Act* as the landlord created a living environment which was rather uncomfortable for them and knowing that the landlord wanted them to leave made things even more awkward for everyone. The tenants testified that there was a bad relationship from the beginning between the landlord and respondent 1 which stemmed from issues with the landlord. The tenants stated that the landlord was overwhelmed with motherhood and sharing her space with others, and she made that well known to them. The tenants stated that the landlord made unreasonable requests from them to spend time with her and have house meetings and brief discussions, which ultimately interfered with their peaceful enjoyment. The tenants stated that the landlord would get upset if they passed in the hallway and did not speak. The tenants stated that when this happened, the landlord would say that respondent 1 was contrary. The tenants testified that they tried to have a conversation around the logistics of departing the house when the landlord said; *"I have a problem with you and you need to leave"*. The tenants stated that they decided to find a new residence immediately as they were not wanted in their

own home, and the situation had escalated to the point where they could not enjoy their own space. The tenants stated that they also feared having to leave with no place secured as the landlord was advertising for new tenants.

Analysis

14. Section 23 of the *Residential Tenancies Act, 2018* states:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 7(b) set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises on a specific date not less than 5 days, but not more than 14 days, after the notice has been served.

15. The relevant subsections of Section 10 of the *Residential Tenancies Act, 2018* states:

Statutory Conditions

10.(1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of the landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

7. Peaceful enjoyment and reasonable privacy –

(b) The landlord shall not unreasonably interfere with the tenant's reasonable privacy and peaceful enjoyment of the residential premises, a common area or the property of which they form a part.

16. The termination notice was given on 21-November-2023 to vacate the premises on 30-November-2023 which meets the timeline of *not less than 5 days*, but *not more than 14 days* after the notice has been served as per Section 23 as stated above.

17. With regards to the validity of the termination notice under Section 23 of the *Act*, based on the testimony from the landlord and the tenants, I find that there was a strained relationship from the beginning which interfered with the peaceful enjoyment and reasonable privacy of the tenants. The landlord stated that she was overwhelmed with changes in her life, being a new mom and sharing her space with others was difficult. The tenants entered into an agreement whereby they would have their own space and they testified that the landlord made their time there uncomfortable and judged them on a daily basis for things that are normal everyday things. The tenants stated that the landlord continuously made unreasonable requests from them such as asking to have 30-minute conversations and house meetings. The landlord did not dispute that she initiated the discontinuation of the tenancy however I find that the landlord wanted the tenancy to end on her terms so that she would have a new tenant secured and not incur any losses. I find that the tenants were in a situation where they had no choice but to find a new residence and I also find that the termination notice under Section 23 for peaceful enjoyment and reasonable privacy was justified by the tenants.

Decision

18. The termination notice is deemed as valid.

Item # 2: Rent paid \$1800.00

Landlord's Position

19. The landlord is seeking rent paid for the months of December and January in the amount of \$1800.00 as the tenants vacated on 30-November-2023. The landlord testified that she had asked the tenants to move out but was not aware that the move out would occur before she was successful in securing new tenants. The landlord stated that she had a mutually agreed termination date of February 1 or the end of January if needed. The landlord stated that she was unable to rent the unit for the months of December and January and is seeking rent to be paid by the tenants for that period.

Tenant's Position

20. The tenants disputed that they had an agreement to move out at the end of January. The tenants testified that the landlord approached them and told them that she had a problem with them and that they had to leave. The tenants found a new residence and moved on. The tenants stated that they are not responsible for rent for December and January.

Analysis

21. Both parties agreed that the landlord wanted to discontinue the tenancy and was actively seeking new tenants. The tenants found a new residence and moved out on a Section 23 notice which has been deemed a valid notice as per paragraph 18 above. As the notice was deemed to be a valid notice, the tenants are not required to pay rent for the time they did not reside at the residential premises. As such, I find that the tenants are not responsible for rent for months of December and January.

Decision

22. The landlord's claim for rent paid does not succeed.

Item # 3: Utilities Paid \$691.18

Relevant Submission

23. The landlord is seeking utilities paid for the period of October to February in the amount of \$691.18 and she submitted a copy of a utility ledger to support her claim (LL#2). See breakdown of utilities ledger below:

Utilities Ledger 2023-1147-NL & 2023-1180-NL			
Utility	Period	Amount	Total
Internet	2/3 of bill for October 1 - January 31	\$245.33	\$245.33
Electricity	2/3 of bill for November 1- January 31	\$270.85	\$516.18
Heat (oil)	1/2 of bill for December 1 - January 31	\$175.00	\$691.18
			\$0.00
Note: January amounts are estimates			\$691.18

Landlord's Position

24. The landlord stated that she was left with utility bills that she had to cover herself when the tenants vacated, and she is seeking \$691.18 from the tenants to cover what would have been their portion of the bills. The landlord testified that the tenants would have had to pay 2/3 of the internet bill and there are outstanding amounts for the months of October and November when the tenants were still residing there. The landlord testified that the tenants would have had to pay 2/3 of the electricity bill and there are outstanding amounts for the month of November when the tenants were still residing there. The landlord testified that the heat bill (oil) was paid up to date when the tenants vacated, and she is seeking ½ of the bill for December and January. The landlord noted that the amounts listed above are estimated for the month of January 2024. The landlord stated that the tenants are responsible for the utilities up to the end of January.

Tenant's Position

25. The tenants testified that their share of the utilities were paid in full before they vacated the unit and they stated that they are not responsible for utilities for the period they did not reside there especially when they were told to leave by the landlord.

Analysis

26. The termination notice has been deemed a valid notice as per paragraph 18 as stated above and as such, the tenants shall only be responsible for outstanding utility bills for the period that they resided at the unit. The landlord was confused with what the utility amounts should be, and she failed to provide any proof of outstanding bills. The tenants are responsible for utilities for the period that they resided at the unit which brings them up to the end of November 2023. The tenants disputed that they owe any outstanding utilities and the landlord failed to show that there were outstanding bills or what the actual amounts were. For this reason, I find that the tenants are not responsible for the utility bills as claimed by the landlord.

27. I find that the tenants are not responsible for the outstanding utilities as listed on the utility's ledger above.

Decision

28. The landlord's claim for utilities paid does not succeed.

Item # 4: Hearing expenses \$20.00

29. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#3).

30. In accordance with Section 12-1 of the *Residential Tenancies Policy Manuel*, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. As the landlord's claims are not successful, and there isn't any amount awarded, the filing fee of \$20.00 will also not be awarded.

31. I find that the tenants are not responsible for the hearing expenses claimed.

Decision

32. The landlord's claim for hearing expenses does not succeed.

Item # 5: Security deposit applied against monies owed \$675.00
Refund of Security Deposit \$675.00

Analysis

33. Section 14 of the *Residential Tenancies Act*, 2018 states:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.
 - (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
 - (10) Where a landlord believes he or she has a claim for all or part of the security deposit,
 - (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
 - (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.
 - (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).
 - (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.
34. I find that the landlord did not return the security deposit in full within the 10-day timeframe as set out in Section 14 stated above. The landlord did however make application through *Residential Tenancies* to have the security deposit applied against monies owed. It has been determined that the tenants do not owe the landlord any monies as per paragraphs 22, 28 and 32 above. I find that the landlord shall refund the security deposit to the tenants in the amount of \$675.00.

Decision

35. The landlord's claim to have the security deposit applied against monies owed does not succeed.
36. The tenant's claim for refund of security deposit succeeds in the amount of \$675.00.

Summary of Decision

37. The termination notice is deemed as a valid notice.

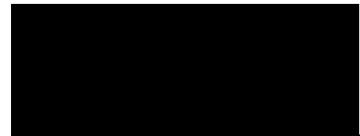
38. The landlord's claims for rent paid, utilities paid and hearing expenses does not succeed.

39. The landlord shall pay the tenants \$675.00 as follows:

Refund of security deposit \$675.00

Total..... \$675.00

January 24, 2024
Date



Pamela Pennell
Residential Tenancies Office