

Residential Tenancies Tribunal

Decision 19-0057-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 02 December 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The originating applicant, [REDACTED], hereafter referred to as landlord, participated in the hearing (Sworn).
3. The countering applicant, [REDACTED], hereafter referred to as the tenant participated in the hearing.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$750.00 per month (utilities excluded) and due on the 1st of each month. It was stated that a security deposit in the amount of \$400.00 was collected on the tenancy on or about 02 December 2018. The tenant issued a termination notice dated 09 April 2019 for the intended termination date of 10 May 2019 under Section 21 of the *Residential Tenancies Act, 2018*.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The landlord agreed to waive her right of service at the onset of the hearing as the tenant failed to serve the claim in time for the scheduled hearing.

Issues before the Tribunal

7. The landlord is seeking the following:

- a) Payment of Rent **\$750.00**
- b) Payment of Late Fees **\$75.00**
- c) Payment of Utilities **\$18.48**
- d) Oil Expenses **\$478.64**
- e) Return of Possessions **\$95.44**
- f) Hearing Expenses
- g) Application of Security Deposit

8. The tenant is seeking the following:

- h) Refund of rent **\$1687.50**
- i) Compensation for Inconvenience **\$1132.73**
- j) Payment of Utilities **\$758.65**
- k) Compensation for Damages **\$500.00**
- l) Hearing expenses

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 21, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Refund/Payment of Rent - \$750.00/\$1687.50

Relevant Submissions

Landlord Position

Payment of Rent

11. The landlord testified that she entered into a written rental agreement with the tenant, commencing 14 December 2018. The agreed rent was set at \$750.00 per month and due on the 1st day of each month with a security deposit in the amount of \$400.00 collected on this tenancy on or about 02 December 2018. The tenant issued a termination notice (**Exhibit T # 1**) on 09 April 2019 stating only that she would be moving in 1 month.

12. The landlord testified that the tenant failed to provide notice as required by the legislation and is now seeking rent for the month of May 2019 in the amount of \$750.00. The landlord testified that as of the hearing date 02 December 2019 rent remains outstanding.

Refund of Rent

13. The landlord testified that there was prior trouble with water in the basement and a contractor was hired to address the issue. The landlord testified that the exterior area was dug up and a water membrane was installed and the weeping tile was channeled to a rock pit area.
14. The landlord testified that there was no indication of any water issues from September to December 24, 2018 when she received a call from the tenant. The landlord further testified that she was notified of water in the basement on only three occasions (December 24, 2018; January 21 and 25, 2019) and assisted each time.
15. The landlord stated that it was thought that the problem had to be corrected from the outside which meant it could not be completed until the spring at the earliest. The landlord further stated that they had found a contractor who could complete the work from the inside and was to be in town on April 9, 2019 to look at the problem and assess the repair. The landlord testified that she asked the tenant for permission to access the basement area so the contractor could assess the repair but was refused. The tenant then asked for compensation.
16. It is the landlord's opinion that rent was low at the time and as such she don't feel that any further compensation is required.

Tenant Position

Payment of Rent

17. The tenant testified that she did issue the notice via text message (**Exhibit T # 1**) on 09 April 2019 and wasn't aware of the technical requirements of a notice that was required. The tenant testified that rent beyond 30 April 2019 was not paid.

Refund of Rent

18. The tenant testified that 10 days after she moved into the property, the basement started to flood. She further testified that as there was water in the basement, she couldn't use the lower portion of the property. The tenant testified that she lived there for 4 months and asked for compensation but the landlord failed to compensate for the lack of use of the basement.

19. The tenant testified that the landlord is responsible for the upkeep of the structural issues of the house and further added that there was water entering from under the footing. The tenant testified that it was warm outside at the time and that one corner of the basement was unfinished as there was a leak the previous winter.
20. The tenant testified that once the water entered the basement she was advised to roll up some towels to soak up the water and turn up the heat to dry up the water. The tenant did state that the landlord's reaction time to the issues was quick. The tenant further added that it was her understanding that the leak was to be fixed in the spring, but later learned that it could be fixed from the inside.
21. Further to this, the tenant testified that there was an electrical issue with the fuse box and that took the landlord 1 week to address. There was garbage left around the property (old lumber, old table etc). The issues described was never addressed with Residential Tenancies.
22. The tenant is claiming $\frac{1}{2}$ of the rent paid during the tenancy as outlined below:

a. Rent paid for December 2018	\$350.00
b. Rent paid Jan – April 2019	<u>3000.00</u>
c. Total Rent paid	\$3350.00
d. Tenant is Claiming $\frac{1}{2}$ Rent paid	<u>\$1687.50</u>

Analysis

23. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there are two separate issues here that needs to be addressed:
 - a. (i) is the landlord entitled to rent in lieu of notice as claimed; and
 - b. (ii) is the tenant entitled to a rebate of rent?
24. I will deal with each item separately on their merits and summarize both at the conclusion. With respect to rent in lieu of notice, a landlord is entitled to a notice of termination under the *Residential Tenancies Act, 2018*. Whereas the tenant did send the landlord a text message (**Exhibit T # 1**) indicating she was moving, it was not in a form prescribed by the minister, it was not issued with a specified date of termination nor did it indicate which section of the legislation it was being issued under. In that case, the landlord really had no idea when the tenant was moving.
25. Once the landlord recovered or had possession of the unit, the landlord has an obligation to mitigate any potential loss as a result of the lack of termination notice terminating the rental contract. Mitigation would mean an attempt to re-rent or sell the unit to recover any loss. It is the evidence of the landlord that the property was listed for sale once recovered and the closing date was on 25 July

2019. In this case, I find that the tenant failed to provide a valid notice of termination and the landlord did mitigate their loss by placing the property for sale and subsequently selling the property with a closing date of 25 July 2019. As such, I find the tenant is responsible for the rent for the month of May 2019 in the amount of **\$750.00** representing 1 month rent or the required notice period. The landlord's claim for rent in lieu of notice succeeds.

26. Now to discuss the claim for a rebate of rent. The tenant is seeking compensation for $\frac{1}{2}$ the rent paid for the period of time living in the rented premises in the amount of \$1687.50. The tenant argues that she did not have use of the lower portion of the property and as such should be refunded $\frac{1}{2}$ the rent.
27. The facts show that there was a pre-existing issue in the property prior to the tenant taking possession. It has also been stated that a contractor was engaged to correct the issue by installing a water membrane barrier and channeling the weeping tile to a rock pit. The corrective measures are what would be expected. The indication is there were no issues with water until December 24, 2018. The testimony of the landlord is that the only times she was made aware of water was December 24, 2018, January 21 and 25, 2019.
28. There is no question that the tenant did ask in a text to the landlord for a reduction in rent on 29 January 2019 and there was no apparent response in the messages that were presented.
29. In reviewing the evidence, it is apparent that there was some water in the property in one corner of the basement. The photo does not depict a significant amount of water or anywhere near the $\frac{2}{3}$ rd's of the basement as described by the tenant. It is also clear that the inconvenience was for a specified period from December 24, 2018 to January 25, 2019.
30. I agree with both the tenant that there was a level of inconvenience with the water. However, the landlord did attempt to rectify that as best as could happen given it was the middle of winter. I can draw from personal experience on this issue in that I had a similar experience the previous year and no contractors would excavate during the winter. The landlord also did take care of the electrical issue in a reasonable time (1 week).
31. I cannot see the inconvenience for $\frac{1}{2}$ of the property beyond the immediate water concerns of December and January as indicated. There was an inconvenience for this period no doubt but I find the claim for $\frac{1}{2}$ of the rent to be excessive. I can only assume beyond the period in question, there were no additional water issues or electrical issues. The one picture of the lower level submitted as evidence shows that the lower level (basement) was a typical basement area used primarily for storage and not a normal living area. I would characterize this as an area that was not frequented other than to store or retrieve items or perhaps (making an assumption) to do laundry. In this light I find that it is difficult to calculate a number for the amount of space not usable. As such, I will make an arbitrary award for same.

32. This is a defined period of approximately 1 month and I agree that compensation to the tenant is reasonable for this period. I find it is reasonable that the tenant be compensated for $\frac{1}{2}$ of a month's rent (**\$375.00**) for the inconvenience when water seeped into the basement.

Decision

33. The landlord's claim for rent succeeds as follows:

a) Rent in Lieu of Notice	\$750.00
b) LESS: Rebate of rent	<u>(375.00)</u>
c) Total Owing to Landlord	<u>\$375.00</u>

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

34. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.

35. The landlord testified that the tenant has been in arrears since 1 May 2019. The landlord indicated that she is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Tenant Position

36. The tenant understood the claim of the landlord.

Analysis

37. Established by undisputed fact above, the tenant was in arrears for the period ending 31 May 2019. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.

38. Given that the tenant has been in arrears since 1 May 2019, any calculated amount of late fees would exceed the maximum allowable under regulations.

39. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

40. The landlord's claim for late fees succeeds in the amount of \$75.00 as per the regulations established under the *Residential Tenancies Act, 2018*.

Issue 3: Compensation for Utilities – Landlord: \$497.12; Tenant: \$758.65

Relevant Submissions

Landlord Position

41. The landlord is claiming **\$497.12** for the compensation of Electrical (\$18.48) and for the replacement of Oil (\$478.64).
42. The landlord testified that her claim amounts to the responsibility of the tenant for the utilities (Electrical and Oil) during the period for which she is contractually responsible for the unit and for the rent.
43. The landlord is seeking the electrical charges in lieu of notice in the amount of (\$18.48) and submitted into evidence a copy of a NL Power invoice (**Exhibit L #2**) in the amount of \$51.22. The landlord testified that she did not charge for the basic customer service charge (\$17.51) but only calculated the actual amount of electricity used by the tenant or would have been used. The landlord presented the following regarding the electrical:

a. May 31, 2019 Meter Reading (Exhibit L#3):	7197
b. May 6, 2019 Meter Reading:	<u>7056</u>
c. KWh used for period	141 KWh
d. @ 0.11391/KWh	\$16.07
e. HST on charges	2.41
f. Total Owing	<u>\$18.48</u>
44. The landlord further testified that as it relates to oil, it was the contractual responsibility of the tenant to ensure that the oil gauge was left on $\frac{3}{4}$ of a tank at the conclusion of the tenancy. The landlord submitted into evidence photos of the gauge (**Exhibit L # 3**) on May 13, 2019 and again on May 31, 2019 once filled by the landlord. The landlord further submitted a copy of the rental agreement (**Exhibit L # 4**) to substantiate the contractual obligation of the tenant and a copy of the invoice from Ultramar (**Exhibit L # 1**) showing the purchase of fuel in the amount of \$478.64.
45. The landlord is seeking the amount of \$478.64 for the purchase of fuel which was the responsibility of the tenant.

Tenant Position

46. The tenant is seeking compensation for utilities in the amount of **\$758.65** representing $\frac{1}{2}$ of the utilities paid during the tenancy (\$317.31 – Electrical), (\$1600.00 – Oil).
47. The tenant is seeking a refund of the $\frac{1}{2}$ the utilities paid for the property as inconvenience similar to the claim for rent above. The tenant testified that she paid \$317.31 in Electrical and submitted the associated NL Power Invoices (**Exhibit T # 4**). Additionally, the tenant testified that she paid \$1600.00 in oil for the period and submitted into evidence copies of her Visa Statement (**Exhibit T # 5**) showing two charges of \$400.00 for the period. There were no detailed receipts from the Oil Company.

Analysis

48. The issue of the tenant's electrical charges has nothing to do with heating the property as the unit is heated with oil. There is no direct relationship or correlation to the usage of the electricity and being inconvenienced. As such, the tenant's claim for rebate of the electrical payments in the amount of \$317.31 is dismissed.
49. The landlord's claim for electrical in lieu of notice is directly related to the issue of lack of proper notice. The calculation above for the electrical usage is generous to the tenant as they too would be responsible for the basic customer service charge. However, the landlord is not claiming it, so it will not be awarded. I find that the claim of the landlord for utilities in lieu of notice is successful in the amount of **\$18.48**.
50. The issue of oil is a little more complex. The landlord is claiming oil that should have been placed in the tank at the conclusion of the tenancy under a contractual obligation outlined in the rental agreement (**Exhibit L # 4**). The landlord has demonstrated that:
 - a. The contractual obligation of the tenant exists;
 - b. The level of fuel was not what it was supposed to be under contract and;
 - c. The fuel was purchased by the landlord.
51. I find that the tenant is responsible for the oil placed in the tank at the conclusion of the tenancy that the tenant failed to place in the tank bringing it to a $\frac{3}{4}$ level mark. The landlord's claim for oil is successful in the amount of **\$478.64**.
52. The tenant is seeking a rebate of the utilities (Oil) for the inconvenience associated with the water and electrical issue and the claimed extra heat incurred to dry out the property. The tenant is claiming that \$1600.00 of oil was purchased during the 4 months in the property. There were no receipts or invoices presented from the oil company to demonstrate exactly what was purchased. The only indication was two payments to an oil company at \$400.00 each made

by Visa.

53. I find that there was at least some oil purchased by the tenant in all likelihood. I have further found above that there was an inconvenience to the tenant for the loss of use of space. Quantifying the extra amount of oil use is virtually impossible without at the very least Invoices from the company showing exactly what was purchased. I will make an arbitrary award for the obvious inconvenience as noted above, but being cautious as the inconvenience related to oil does not exactly correlate the same. I find that \$100.00 is a fair and reasonable compensation for the period of inconvenience in question.
54. The tenant's claim for rebate of utilities succeeds at **\$100.00**.

Decision

55. The landlord's claim for utilities succeeds in the amount of \$397.12 as follows:

a. Electrical owed to landlord	\$18.48
b. Oil Expense owed to landlord	<u>478.64</u>
c. Sub-total	\$497.12
 d. LESS: Rebate of Utilities to Tenant	 <u>(\$100.00)</u>
 e. Total Utilities owing to Landlord	 <u>\$397.12</u>

Issue 4: Compensation for Inconvenience - \$1132.73

Tenant Position

56. The tenant is seeking compensation in the amount of \$1132.73 for the cost of moving from the unit with Household Movers.
57. The tenant testified that she was forced from the unit because of the landlord's failure to maintain the unit. The tenant testified that she had to secure Household Movers to move her belongings at a cost of \$1132.73 (**Exhibit T # 3**) and showed a Visa statement with a charge to Household Movers Inc. The tenant testified that the charge to her Visa in Exhibit T #3 was for the moving services required.
58. The tenant testified that she moved her belongings to a storage unit and then to a new home.

Landlord Position

59. The landlord disputes this portion of the claim entirely and claims that the tenant

did not move because she was forced to, she moved because she purchased a new home which does not happen overnight.

60. The landlord testified that she shouldn't be responsible for the movement of the tenant's belongings into a new property.

Analysis

61. After careful consideration of the totality of the evidence concerning the inconvenience of the tenant and the conditions of the property and in this section the charges from Household Movers Inc., I find that very little of the tenant's claim has been substantiated.
62. It has been found that the inconvenience to the tenant has been minimal at best and certainly would not be to the level of forcing a person or family to move from a property. The tenant certainly did make the choice to move, but I find that it is more likely that the tenant moved once a new home was acquired. The inconvenience was in January and nothing was addressed by the tenant until after the landlord filed a claim with Residential Tenancies. This fact is not lost on the tribunal.
63. The charge to a Visa simply means that the tenant made a payment for services to the company (in this case Household Movers Inc.) for a service. It does not detail what service was rendered, for whom the service was rendered. It is likely that this could have been for an unrelated moving or storage contract. The devil is in the details and the tenant in this case is required to substantiate the claim with evidence. The lack of receipt from Household Movers Inc. hinders the case.
64. I find that there was no inconvenience that required the tenant to move. I find that it was the tenant's choice to purchase a new home and move and the expenses for that move would certainly not be the responsibility of the landlord. As such, the tenant's claim for compensation for inconvenience fails.

Decision

65. The tenant's claim for compensation for inconvenience fails.

Issue 5: Compensation for Damages - \$500.00

Tenant Position

66. The tenant is seeking compensation for items damaged and items that had to be disposed of resulting from the water seepage into the basement. The tenant testified that there were no photos, invoices, estimates or receipts to submit as

evidence to substantiate the claim.

Landlord Position

67. The landlord disputes this portion of the claim in its entirety.

Analysis

68. The applicant in this portion of the claim, the tenant, has failed to support the claim with any evidence other than her testimony that items were damaged and had to be discarded.
69. I find that the tenant has failed to substantiate the claim and as such, this portion of the claim fails.

Decision

70. The tenant's claim for damaged items fails.

Issue 6: Return of Possessions - \$95.44

Landlord Position

71. The landlord testified that in the basement of the house there were three metal shelves to keep things off the floor and a 2 shelf antique wooden shelving unit that wasn't there when the tenant vacated. The landlord testified that there were no photos of the unit available. The landlord submitted an estimate for a similar replacement unit (**Exhibit L # 5**) in the amount of \$82.99 plus HST.

Tenant Position

72. The tenant testified that she doesn't have the shelf as described. The tenant stated that many items were being sold as she moved in and it is likely that the shelf was sold at that point. She stated that many family members were involved in the sale.

Analysis

73. The applicant in this portion of the claim, the landlord, has failed to support the claim with any evidence to show that the unit was in the property at the beginning of the tenancy. This is a key factor to prove the claim.
74. As the landlord has failed to substantiate the claim at the level of the legal test of "on the balance of probabilities", this section of the claim fails.

Decision

75. The landlord's claim for return of possession fails.

Issue 7: Hearing Expenses

Landlord Position

76. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ([REDACTED]) (**Exhibit L # 6**). The landlord is seeking this cost.

Tenant Position

77. The tenant paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ([REDACTED]) (**Exhibit T # 6**). The tenant is seeking this cost.

Analysis

78. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The expenses incurred by the landlord is considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. In addition, the landlord's claim has been successful. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

79. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00 as an application filing fee.

Issue 8: Application of Security Deposit

Landlord Position

80. The landlord testified that a security deposit in the amount of \$400.00 was paid on the property on or about 02 December 2018. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

Tenant Position

81. The tenant is agreeable to apply the security deposit.

Analysis

82. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$400.00. The landlord's claim has been successful in part. The security deposit plus accrued interest is \$400.00 as the interest rate for 2018 – 2019 is set at 0%.

Decision

83. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held against the attached Order as outlined in the attached.

Summary of Decision

84. The landlord is entitled to the following:

a)	Rent Owing	\$375.00
b)	Late Fees.....	75.00
c)	Payment of Utilities	397.12
d)	Hearing Expenses	<u>\$20.00</u>
e)	Sub-total	\$867.12
f)	LESS: Security Deposit.....	(\$400.00)
g)	Total Owing to the Landlord	<u>\$467.12</u>

03 April 2020

Date

Michael Greene
Residential Tenancies Tribunal