

Residential Tenancies Tribunal

[REDACTED] Decision 19-0657-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 17 October 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The tenant, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlords are seeking an order for a payment of rent in the amount of \$1100.00 and hearing expenses in the amount of \$20.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10, 20 and 23 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent - \$1100.00

Relevant Submissions

The Landlords' Position

6. The landlords and tenant had entered into a 1-year, fixed-term lease, commencing 01 September 2018, and a copy of that executed lease was

submitted with the landlords' application (■ #1). The agreed rent was set at \$550.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$200.00.

7. The tenant was one of 5 tenants-in-common residing at the unit and one of these tenants-in-common was ■, the landlords' son. Each tenant had their own room and the remainder of the house was a common living space.
8. The landlords live in ■, and landlord2 stated that he found work in St. John's and he needed to find new house in that city. When his son, ■, finished school in St. John's in May 2019, the landlords went to St. John's and stayed in ■'s room, for various intervals, while they were looking at properties.
9. The landlords stated that ■ had informed all the tenants at the unit that they would be staying in his room for a time and they also stated that when they arrived at the house, they had asked the tenants if there was any problem with them staying there. They testified that everyone approved of them using ■'s room.
10. The landlords stated that the tenant moved out of his room at the end of June 2019 and it sat vacant during July and August 2019. The tenant also failed to pay any rent for those last 2 months.
11. Landlord1 testified that she had ■ advertise the unit on Kijiji, Instagram, Facebook and MUN Facebook and landlord2 stated that these advertisements were for leases that would commence 01 September 2019. No copies of those advertisements were submitted at the hearing.
12. Landlord2 stated that there was one person, ■, who was interested in moving into the unit during the summer and she had actually paid the security deposit. However, he claimed that the tenant had called her and told her that she would have to share the house "with seniors" and she subsequently decided to back out.
13. The landlords stated that they had received no rent for July and August 2019 and they are seeking an order for a payment of \$1100.00 for those 2 months.

The Tenant's Position

14. The tenant stated that he vacated the unit on 20 June 2019. He claimed that the reason he had moved out was because the landlords were in violation of their lease agreement, in violation of the *Privacy Act*, and because the landlords had interfered with his peaceful enjoyment. He claimed that because of these infractions, the unit was no longer liveable.
15. The tenant point out that statutory condition 5 of the *Residential Tenancies Act, 2018* requires that a landlord provide a written, 24-hour notice that they are

entering the rented premises. The tenant stated that he had received no such notice from the landlords and in June 2019 they moved into the rented unit.

16. He also argued that by living in a property that they were at the same time supposed to be renting out, the landlords had “virtually torn the rental agreement in half” and they had, in effect, terminated the agreement.
17. The tenant acknowledged that [REDACTED] had informed him that the landlords would be moving in, but he pointed out that [REDACTED] is not the landlord and that that conversation does not constitute a notice of entry under the *Act*. He also pointed out that he had informed [REDACTED] that he did not condone his parents, the landlords, moving into the property and he also informed him that if they did so, he would be moving out.
18. The tenant acknowledged that the other tenants-in-common at the unit had indicated that they had told the landlords that they had no issues with them moving into [REDACTED]’s room, but he claimed that they had only done so because they wanted to avoid conflict and because they were all friends with [REDACTED].
19. Regarding [REDACTED], the tenant denied that he had called her. He testified that [REDACTED] had reached out to him, and he merely told her that if she moved into the rental unit, she would have to share the common spaces with the landlords, who were in their late 50s and early 60s. It was her decision as to whether she rented a room or not.

Analysis

20. The rental agreement the tenant had entered into was not set to expire until the end of August 2019 and, under normal circumstances, neither the landlord nor the tenant could terminate the agreement prior to that date. The *Residential Tenancies Act, 2018*, though, does anticipate that there could arise special circumstances under which a landlord or tenant could give an early termination notice for cause.
21. The tenant alluded to 2 such circumstances in his submissions. In cases where a landlord breaches a material condition of the rental agreement, a tenant can give a 1-month termination notice under section 20 of the *Act* (notice where material term of agreement contravened). Alternatively, in cases where a landlord interferes with a tenant’s peaceful enjoyment, the tenant can give the landlord a 5-day notice under section 23 of the *Act* (notice where landlord contravenes peaceful enjoyment and reasonable privacy).
22. I accept the tenant’s claim that the landlords had given him no written notice, as required by section 10.(1)5 (entry of residential premises) of the *Residential Tenancies Act, 2018*, that they would be entering the premises in June 2019. By entering the property without such notice, the landlords had indeed breached their rental agreement.

23. However, in cases where a landlord commits a breach of the rental agreement, section 20 of the *Act* requires the tenant to give the landlords a written notice indicating that they had breached their agreement and giving them a reasonable time to remedy the breach. Where the landlords fail to remedy the breach, the tenant can issue a 1-month, written, termination notice.
24. The tenant conceded at the hearing that he had not provided the landlords with a written notice of the breach or with a notice of termination.
25. I agree with the tenant that, given that he had originally moved into the rented premises in September 2018 with 4 friends that were attending college, it must have been awkward to find himself, in June 2019, residing with the parents of [REDACTED]. I am not sure, though, that this would constitute unreasonable interference with the tenant's peaceful enjoyment as contemplated under section 23 of the *Act*.
26. In any case, even if the landlords' behaviour did reach the threshold of "unreasonable interference", if the tenant wished to terminate his agreement under section 23 of the *Act*, he was required to provide the landlords with a written notice of termination. He did not.
27. Where a tenant vacates residential premises without giving a valid notice of termination under the *Residential Tenancies Act, 2018* he is considered to have abandoned the property and he is liable for any damages caused as a result of his abandonment, including any loss of rental income suffered by the landlords. That liability, however, is tempered by the landlords' legal duty to mitigate those damages, as stated in section 10 of the *Act*:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of 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:

...

4. Mitigation on Abandonment - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.

28. The landlords presented no evidence at the hearing (e.g., copies of advertisements, etc.) showing that they had made any attempts to re-rent the tenants room during July and August 2019 and landlord2 testified that the advertisements placed by his son were for September 2019.

29. Although I accept the landlords' claim that had the tenant not abandoned the unit they would not have suffered this loss of rental income, I find they had not fulfilled their legal obligation to take all reasonable steps to mitigate that loss.
30. As such, the landlords' claim does not succeed.

Decision

31. The landlords' claim for a payment of rent does not succeed.

Issue 2: Security Deposit

32. The tenant paid a security deposit of \$200.00 on 21 August 2018 and receipt of that deposit is acknowledged in the submitted rental agreement.
33. The landlords are still in possession of that deposit and both parties acknowledged that they had not entered into a written agreement on the disposition of that deposit.
34. As the tenant vacated the rented premises at the end of June 2019, the landlords are required to return the full amount of the deposit to the tenant.

Summary of Decision

35. The tenant is entitled to the following:

- a) Refund of Security Deposit\$200.00

01 April 2020

Date

John R. Cook
Residential Tenancies Tribunal