

Residential Tenancies Tribunal

Decision 19-0803-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 13 January 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via teleconference to the Residential Tenancies office in Mt. Pearl.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the landlord participated in the hearing (*Affirmed*).
4. The details of the claim were presented as a written fixed term rental agreement set to expire on 31 July 2019, with rent set at \$800.00 per month exclusive of utilities and due on the 1st of each month. It was stated that a security deposit in the amount of \$400.00 was collected on this tenancy on or about 01 January 2019. The security deposit was refunded to the tenant in the amount of \$325.00 on the termination of the agreement. The landlord issued a termination notice dated 05 July 2019 for the intended termination date of 05 July 2019 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 file was amended to remove [REDACTED] from the file as the property was legally titled to [REDACTED] during their marital separation. [REDACTED] acts only as a maintenance person from time to time and is determined not to be a landlord in this matter.
7. The legal name of the applicant was amended to be [REDACTED]. Any order and decision going forward will reflect the legal name change.

Issues before the Tribunal

8. The tenant is seeking the following:
 - a) Refund of rent **\$1446.16**
 - b) 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: Rent Owing - \$1446.16

Relevant Submissions

Tenant Position

11. The tenant testified that during the tenancy he had a friend living with him and there was a nasty break-up and he further testified that he went to stay with his parents.
12. The tenant stated that on 05 July 2019 he received a call from the landlord concerning the power being cut at the rental unit. The tenant testified that he was not able to deal with the power issue as it was Friday afternoon.
13. The tenant testified that the landlord recovered the unit as an abandoned unit and he feels that this is not right.

14. The tenant testified that he is an Advanced Education and Skills (AES) client and that the rent for August was sent to the landlord and was never returned to either the tenant or AES. The tenant submitted into evidence a printout from AES (**Exhibit T #1**) showing that a deposit in the amount of \$800.00 was made to the landlord for August 2019.
15. The tenant testified that the method that the landlord used to recover the unit was unlawful. The tenant submitted into evidence a termination notice issued by the landlord issued under Section 21 (**Exhibit T # 2**). The notice was issued on 05 July 2019 for the termination date of 05 July 2019. Additionally the tenant submitted into evidence a copy of the notice of Abandonment (**Exhibit T # 3**) which was posted on 05 July 2019 to recover the property on 06 July 2019.
16. The tenant is seeking the refund of rent for the period of 12 July 2019 to 31 July 2019 in the amount of **\$646.16** and the full month of rent for August 2019 in the amount of **\$800.00** for a total of \$1446.16.

Landlord Position

17. The landlord testified that the apartment has been there for 28 years with little issues. The landlord testified that because of the tenant's actions of not ensuring that the power bill was paid, it was his actions that caused the power to be disconnected. The disconnection of power caused food in the unit to spoil and the septic pump to stop functioning resulting in a sewer back-up.
18. The landlord testified that she received the rent from AES and recovered the unit on 06 July 2019 under the abandonment provisions of the legislation. The landlord testified that she feels entitled to the rent as she never received any notice of termination.
19. The landlord testified that she issued both the termination notice and an abandonment notice to deal with the emergency sewer back-up due to the septic pump not working as the power was disconnected. The landlord testified that the power was restored on 11 July 2019.

Analysis

20. I have reviewed the testimony and evidence of the tenant and landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the landlord entitled to the rent being held for the months of July and August 2019.
21. The determination of the rent owed depends on the validity of the notices issued by the landlord in this matter. There were two such notices issued (1) termination notice issued under Section 21 for an uninhabitable property and (2) an abandonment notice.

22. The landlord testified that on or about 05 July 2019 they received notification from NL Power that the power to her rental property was cut. The electrical account was not in the landlord's name at this point but was in the name of the tenant. It is the sole responsibility of the holder of the electrical account to ensure that the account is kept up to date and active during a tenancy. It is incumbent upon the landlord to take prudent actions as required to ensure the security of the property. The landlord's issuance of a termination notice under Section 21 is the accepted notice to issue given the circumstances. A property is not habitable without a power source and as this was the case. I find that the landlord was justified in issuing this notice.
23. A review of the notice reveals that it was issued in a form prescribed by the minister and issued in accordance with the requirements of Section 21 and 34 of the *Residential Tenancies Act, 2018* and served in a method allowable under Section 35 of the *Residential tenancies Act, 2018*. As such, I further find that the notice issued by the landlord is in full compliance with the legislation and therefore valid.
24. The landlord additionally issued a notice of abandonment with the intention to recover the property on 06 July 2019. The landlord testified that when she investigated the power being cut, it was clear that nobody was living in the unit and posted both the termination notice and abandonment notice. The landlord testified that the unit was recovered on 06 July 2019.
25. With respect first to the notices issued, it is clear that the tenant left the unit at some point previous to the notices as a result of a domestic dispute with a partner. It should be pointed out here that the tenant did not issue a notice to the landlord under Section 26 of the *Residential Tenancies Act, 2018* (Notice where the Tenant is a Victim of Family Violence). The tenant retained the fixed term rental agreement and was contractually responsible for this agreement. Under the agreement there is a notice requirement to terminate a tenancy. No notice was ever issued by the tenant. The lapse in the power account was the sole responsibility of the tenant and the landlord reacted as required once notification was received from NL Power of the power interruption to the unit. The landlord's assertion that the property was abandoned I find was a reasonable assertion given that the power was cut to the unit and the tenant's testimony here that he had moved into his parents place of residence without knowledge that his partner had vacated the rental unit.
26. The normal requirement for a tenant to terminate a tenancy of a fixed term agreement is the last two month of the rental agreement. This was not done and a landlord is entitled to a proper notice of termination under the legislation. In this matter I find that the landlord acted appropriately by issuing the notices under Section 21 and 31 to protect the property. The landlord made the choice to terminate the tenancy and recover the unit for the protection of the unit. The tenant's failure to adequately maintain the power supply to the unit is a form of constructive abandonment and as such does not absolve the tenant's

requirement to provide the two month notice to the landlord. As such, I find that the landlord is entitled to retain the rent paid for July 2019 and additionally to retain the rent received for the month of August 2019 for a total of \$1600.00. I find that the tenant's claim for refund of rent fails.

Decision

27. The tenant's total claim for refund of rent fails

Issue 2: Hearing Expenses

Tenant Position

28. 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 # 4).

Analysis

29. I have reviewed the testimony and evidence of the tenant in this matter. The expenses incurred by the tenant are 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*. However, the tenant's claim has not been successful. As such, I find the tenant is responsible to cover his own hearing expenses.

Decision

30. The tenant's claim for hearing expenses fails.

Summary of Decision

31. The tenant's claim fails.

27 March 2020

Date

Michael Greene
Residential Tenancies Tribunal