

Residential Tenancies Tribunal

Decision 20-0026-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 12 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent and landlord, [REDACTED], was represented at the hearing by [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]").

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$483.00 and a refund of rent in the amount of \$645.00.
4. The landlord is seeking an order for a payment of rent in the amount of \$650.00 and authorization to retain the security deposit.

Legislation and Policy

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

Issue 1: Rent - \$650.00

Relevant Submissions

The Tenant's Position

7. The landlords and the tenant entered into a 9-month, fixed-term rental agreement commencing 26 November 2018 and a copy of the executed lease was submitted with the tenant's application (■ #1). The agreed rent was set at \$650.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$483.00.
8. The rental unit is an apartment in a 3-storey house and there are apartments above and below the tenant's. ■ lives in the apartment above her and ■ moved into to the downstairs unit a month after her tenancy began. The tenant complained that both ■ and ■ had been interfering with her quiet and peaceful enjoyment since she moved into the unit.
9. Regarding ■ in the downstairs apartment, the tenant complained that there is oftentimes a lot of loud noise coming from that apartment and she also stated that she can hear what she described as domestic abuse coming from that apartment. The tenant stated that because of these issues, she has had to call the police about ■ on 3 separate occasions.
10. The tenant also stated that she had been in contact with ■ about ■, and she had been assured that she was going to move him to another property, but she has not followed through on that promise.
11. With respect to ■, who lives above her, the tenant also complained that she can hear domestic altercations coming from that apartment. During one such altercation, ■ was screaming at a women and yelling out that he was a rapist. The tenant stated that she has subsequently learned that ■ is in fact a convicted rapist.
12. The tenant also stated that she was compelled to call the police about ■ as well as one night he had tried to break into her apartment while she was in bed. The tenant stated that she voiced her concerns about ■'s behaviour to ■ back in August 2019 and she again had received assurances from her that she would have ■ evicted. ■ told her that she was going to issue him a 3-month termination notice.
13. Since then, the tenant had been inquiring of ■ as to status of the eviction and when will ■ be out of the unit. However, she was informed by ■ in November 2019 that she was not going to evict ■.
14. On hearing that news, the tenant stated that she immediately sent a termination notice to the landlord by text-message on 15 November 2019. That notice was

issued under section 23 of the *Residential Tenancies Act, 2018* (notice where landlord contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 30 November 2019. The tenant vacated on that date.

The Landlord's Position

15. █ stated that he has had no issues with █ since he had moved in and he claimed that he is a good tenant.
16. Regarding █, █ acknowledged that he had been convicted of a crime and had spent time in prison and he claimed that █ has to report to the police once a week. However, he argued that █ had paid his debt to society and he cannot evict someone just because they had chequered past.
17. Regarding the alleged attempted break-in, █ stated that █ had informed her that he had not tried to enter the tenant's apartment. She stated that █ had told her that a friend of his was visiting his unit and he had accidentally gone to the wrong unit and tried the tenant's door knob to see if the door was open.
18. █ did state that she was sympathetic to the tenant's plight, though, and █ pointed out that that he is a father of several daughters and he understood why the tenant was concerned.
19. █ testified that she had tried to get █ to move to another apartment that they had available and she also stated that she had tried to get him to sign a document stating that he would "move on" but she stated that █ refused to move to another apartment and would not agree to end his tenancy.
20. She also stated that she informed █ that she would issue him a 3-month termination notice but he replied that if she did so, he would fight that notice at Residential Tenancies.
21. █ stated that she had done everything that could reasonably be expected of her in dealing with the tenant's complaints. She even pointed out that in August 2019 when the tenant's lease expired, she did not require her to sign on for another fixed term but instead allowed the agreement to revert to a monthly tenancy so that the tenant could terminate her agreement on 1-month's notice if her issues with █ continued.
22. █ stated that the notice that she had received from the tenant was not a 1-month notice and it was therefore not valid. Both █ and █ argued that the tenant's peaceful enjoyment had not been interfered with during her tenancy and she was not in a position to issue a short notice under section 23 of the Act. █ claimed that on 15 November 2019, the earliest the tenant could have terminated her agreement was 31 December 2019.

23. █ stated that after the tenant moved out, the unit sat vacant during December 2019 and January 2020 despite the fact that they had been advertising the unit since they had received the tenant's termination notice. Copies of those advertisements were submitted at the hearing (█ #1).
24. The landlord is seeking an order for a payment of \$650.00 in compensation for the loss of rental income they had suffered during December 2019.

Analysis

25. Statutory condition 7.(b), outlined in 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 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.

and section 23 of this Act states:

Notice where landlord contravenes peaceful enjoyment and reasonable privacy

23. (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 specified date not less than 5 days, but not more than 14 days, after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the tenant;

(b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises; and

(c) be served in accordance with section 35.

26. I found the testimony of the tenant to be credible and believable and I accept her claim that loud disturbances could be heard coming from both [REDACTED]'s and [REDACTED]'s apartments, prompting her to call the police on several occasions.

27. I also accept her testimony that [REDACTED] had tried to enter her apartment. [REDACTED] stated that [REDACTED] had denied that claim, but that statement amounts to no more than hearsay.

28. I find that these sorts of incidents would clearly interfere with one's quiet and peaceful enjoyment of their rented premises and that behaviour is unreasonable given the close proximity of their living conditions.

29. I also note that despite the [REDACTED]'s and [REDACTED]'s arguments that the tenant's peaceful enjoyment had not been interfered with, that argument does not line up with other statements they had made at the hearing or how it was that they responded to the tenant's complaints. Both [REDACTED] and [REDACTED] stated at the hearing that they were sympathetic to the situation that the tenant was in and [REDACTED] argued that she had been working as hard as she could to have [REDACTED] move out after she had received the complaints from the tenant. But if the tenant's claims are not true, then why was [REDACTED] trying to evict [REDACTED]? What is it that [REDACTED] and [REDACTED] sympathize with?

30. Accordingly, I find that the tenant was in a position to terminate her rental agreement under section 23 of the *Residential Tenancies Act, 2018* and the tenancy ended on 30 November 2019.

31. As the tenancy was terminated effective 30 November 2019, the landlord has no claim to rent after that period.

Decision

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

Issue 2: Refund of Rent - \$645.00

Relevant Submissions

The Tenant's Position

33. The tenant stated that because of the incidents which had been taking place at the rental complex, she found that she was very anxious and was unable to sleep in her apartment.

34. Because of the mental turmoil she was dealing with, the tenant stated that she did not reside at the rental unit at all during the month of November 2019 but was rather staying at her mother's home.
35. As the tenant was not living at the rental unit during November 2019, she argued that she is entitled to a rebate of rent for that month.

The Landlord's Position

36. [REDACTED] reiterated that she had not required the tenant to sign a new fixed-term lease and she stated that she could have given her a 1-month's notice if she did not want to remain at the apartment. [REDACTED] stated that she did not know what else she could have reasonably done.

Analysis

37. The tenant issued the landlord a termination notice that had an effective termination date of 30 November 2019.
38. Termination notices under section 23 of the Act can be as short as 5-days. The whole point of giving tenants the ability to terminate a rental agreement on such short notice is to allow them to quickly remove themselves from the sorts of situations the tenant complained about at this hearing.
39. If the tenant was not residing at the unit during November 2019 and if she did not want to pay rent for that month, she ought to have issued the landlord a notice sooner than she had and with an earlier termination date.
40. As the tenancy did not end until 30 November 2019, I find that the tenant is responsible for rent up to that date.

Decision

41. The tenant's claim for a rebate of rent does not succeed.

Issue 3: Security Deposit - \$483.00

42. The tenant submitted a receipt at the hearing showing that she had paid a security deposit of \$483.00 on 12 November 2018 ([REDACTED] #2) and receipt of that deposit is acknowledged in the submitted lease. As the landlords' claim for rent has not succeeded, they shall refund the full amount of the deposit to the tenant.

Decision

43. The tenant's claim for refund of the security deposit succeeds in the amount of \$483.00.

12 May 2020

Date


John R. Cook
Residential Tenancies Tribunal