

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0043-05  
[REDACTED]

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 1:10 p.m. on February 24, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The originating applicants, [REDACTED] and [REDACTED], hereafter referred to as the tenants, participated in the hearing.
3. The countering applicant, [REDACTED] [REDACTED], represented by [REDACTED] and [REDACTED] hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.

### **Preliminary Matter:**

4. Landlord1 amended the application to reflect the company name as [REDACTED]  
[REDACTED].
5. Landlord1 also amended the claim for the payment of rent from \$9560.00 to \$2137.96 for the period January 1 – February 24, 2020.

### **Issues before the Tribunal**

6. The tenants are seeking the following:
  - a. Return of rent in the amount of \$4780.00;
  - b. Refund of the security deposit in the amount of \$890.00;
  - c. Hearing expenses.

7. The landlords are seeking the following:
  - a. Payment of rent in the amount of \$2137.96;
  - b. Payment of late fees in the amount of \$75.00;
  - c. Payment of utilities in the amount of \$254.51;
  - d. Compensation for damages in the amount of \$500.00;
  - e. Hearing expenses.

## **Legislation and Policy**

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 10, 14, 15, 18, 19 and 21 of the Act and *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

### **Issue 1: Refund of rent - \$4780.00**

#### Tenant Position

10. The tenants testified that they moved into the unit on August 31, 2019 for a one year term for the period September 1, 2019 to August 31, 2020. The rent was set at \$1195.00 per month due on the 1<sup>st</sup> of each month. They testified that when they moved in they found a lot of issues with the unit. The windows in the bedroom on the main floor and one bedroom upstairs were broken. There was a gap in the window in the downstairs bedroom and the glass did not properly fit the frame in the window in the upstairs bedroom. The air was getting in and making the heating system inefficient. They could not use these two bedrooms because of the cold.
11. The other issues in the unit were that the lock for the basement door was not working; there were no switch plates on the walls; there was cold air coming in around the door in the kitchen; there was mold everywhere; the dryer was not working effectively; there was a crack in the ceiling in the main area and the backyard was not maintained properly. They sent e-mails to landlord2 concerning these issues. Some of the issues were addressed after they sent the e-mail on September 19, 2019. The lock for the basement door was fixed and half of the switch plates were installed.
12. The tenants testified that they were feeling scared in the house because the windows were not fixed. Anyone could get in. All they would have to do was push in on the window. When the carpenter was at the unit he told them that the locks for the windows have to be replaced because they were broken. The tenants said they had a continuous conversation with landlord2 between

September 19, 2019 and December 2019 concerning the replacement of the windows. They were told that the windows were ordered but the windows were never replaced.

13. The tenants testified that there was mold in the bedroom and the kitchen. They kept the heat on in the unit except for the 2 bedrooms. They would leave it on 16 degrees during the day and between 20 and 21 degrees when they were home. The power bills range from \$140.70 for September to \$302.01 for December 2019 and \$84.84 for December 27, 2019 to January 3, 2020.
14. After the landlords gave their testimony the tenants testified that nobody showed them how to use the windows. The locks were broken on the windows when they moved into the unit.
15. The tenants testified that on December 11, 2019 they gave the landlord a request for repairs. The repairs had to be carried out by December 25, 2019. The repairs were not carried out. They said the house was uninhabitable and it was not in a peaceful condition to live in. They gave a termination notice under section 21 (uninhabitable) dated December 30, 2019 on January 2, 2020 to vacate on January 3, 2020. They vacated on January 3, 2020 and they are seeking return of rent for the four months they lived in the unit. The total amount of rent they are seeking is \$4780.00 (4 months x \$1195.00 = \$4780.00).
16. The tenants submitted into evidence a copy of the termination notice dated December 30, 2019 (LL #2) copies of e-mails between the tenants and landlord2 (LL #4), photographs of the unit (LL #5), a USB containing a recording of landlord1 at the unit during the tenancy (LL #6). Landlord1 was not aware that they were recording their conversation. As landlord1 was not aware of the recording I will not be using this in making my decision. They also submitted copies of power bills (LL #7) for the period September 1, 2019 to January 3, 2020 and a copy of the tenant's request for repairs (LL #8).

#### Landlord Position

17. Landlord2 testified that when they were notified the windows were not working, their carpenter went into the unit. When he was at the unit the windows were fine except for one window had a crack in the frame. That window had to be replaced. They ordered a new window but the window was not replaced until after the tenants moved out. She said that the carpenter was to show them how to use the windows.
18. Landlord1 testified that the tenants did not know how to operate the windows. The tenants were slamming the windows. When he went into the unit the windows were in the locked position. He unlocked the windows, closed the

window and then he locked it again. He said you couldn't push the window in because the window was locked.

19. Landlord1 testified that the tenants did not turn on the heat. They only had heat on in a couple of rooms. They wanted to save on electrical costs. He said if there was no heat on in the rooms this would cause mold. In one bedroom there was 3 or 4 mattresses on the floor. There was no circulation in that room.

## **Analysis**

20. I have reviewed the testimony and the evidence of the tenants and the landlords. I have determined that there is one issue that needs to be addressed; are the tenants entitled to return of rent. I find that on December 11, 2019 the tenants gave the landlords a notice to carry out repairs to the unit. The repairs were to be carried out by December 25, 2019. On January 2, 2020 the tenants gave the landlords a termination notice under section 21 (uninhabitable) to vacate on January 3, 2020. The tenants vacated on that date. In considering a termination for premises uninhabitable under Section 21, a tenant must provide documentation from an authoritative body such as a city building inspection. In addition if the unit is declared uninhabitable by a regulatory authority then a termination notice under this section can be issued. As the tenants did not provide any declaration from a regulatory authority and the tenants are not an authority on the habitability of property, the termination notice under this section is not valid. Therefore, the claim for return of rent fails.

## **Decision**

21. The tenants' claim for refund of rent fails as the termination notice was not a valid notice.

### **Issue 2: Payment of rent - \$2137.96**

22. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

### **Landlord Position**

23. Landlord1 testified that the tenants moved into the unit on September 1, 2019 for a one year term with rent set at \$1195.00 per month due on the 1<sup>st</sup> of each month. On January 2, 2020 they received a termination notice from the tenants under section 21 (uninhabitable) that they were vacating on January 3, 2020. They do not agree with the notice. They never had a problem with mold at this property. There were 2 spots of mold in the unit; one in the bedroom and the

other in the kitchen. The mold in the bedroom was caused by the mattresses up against wall. There were 3 mattresses on the floor in one bedroom.

24. Landlord1 testified that they started advertising on Kijiji on January 3, 2020. They would bump the ad to the top of the page every 7 days. They showed the unit a few times but he said the winter is not a good time to rent a unit. The unit was not rented as of the date of the hearing. They are seeking rent for the period January 1 – February 24, 2020 in the amount of \$2137.36.
25. The landlords submitted into evidence copies of the ads on Kijiji for the period January 3 – February 21, 2020 (LL #2) and photographs of the unit (LL #3).

#### Tenant Position

26. The tenants testified that they lived in the unit for 4 months and they requested repairs to the windows. The repairs were not carried out. They didn't feel safe in the house as someone could break into the unit by pushing in on the window. The window was in bad condition when they moved into the unit. They testified that the locks were changed on January 3, 2020.

#### **Analysis**

27. I have reviewed the testimony and the evidence of the landlords and the tenants. I have determined that there is one issue that needs to be addressed; are the tenants responsible for the payment of rent. The termination notice the tenants served was not a valid notice as outlined in 18 above. Under section 31 of the Act, a tenant is considered to have abandoned the unit if the rental agreement has not been terminated in accordance with the Act or the rental agreement. As the termination notice was not a valid notice, the tenants are considered to have abandoned the unit. Under section 10(4) upon abandonment the landlord is required to mitigate his losses. Based on the copies of the Kijiji ads presented, I find that the landlords tried to mitigate their losses as they started advertising on Kijiji on January 3, 2020. As the landlords mitigated their losses, the payment of rent succeeds for the period January 1, 2020 – February 24, 2020 (the date of the hearing) in the amount of \$1195.00 for January 1 – 31, 2020 + \$942.96 ( $\$1195.00 \times 12 \text{ months} = \$14,340.00 \div 365 \text{ days} = \$39.29 \text{ per day} \times 24 \text{ days} = \$942.96$ ) for February 1 – 24, 2020 for a total of \$2137.96.

## **Decision**

28. The landlords' claim for payment of rent succeeds as per the following

a. Rent owing for January 2020 .....	\$1195.00
b. Rent owing for February 1 – 24, 2020.....	<u>\$942.96</u>
c. <b>Total owing to the landlords .....</b>	<b>\$2137.96</b>

### **Issue 3: Late fees - \$75.00**

#### Landlord Position

29. The landlord testified he is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since January 2020.

#### **Analysis**

30. The rental arrears has been established in paragraph 25 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has been in arrears since January 2020 the late fees have exceeded the maximum amount of \$75.00.

## **Decision**

31. The landlords' claim for late fees succeeds in the amount of \$75.00.

### **Issue 4: Payment of utilities - \$254.51**

#### Landlord Position

32. Landlord1 testified that the tenants were responsible for the payment of the utilities. The tenants had the power taken out of their name on January 3, 2020. The landlords said after the tenants vacated they kept minimal heat on in the unit. The cost of the power for the period January 3 – 24, 2020 is \$254.51.

33. The landlords submitted a copy of the Newfoundland Power bill dated February 14, 2020 in the amount of \$254.51 (LL #6) and a copy of the rental agreement (LL #1).

#### Tenant Position

34. The tenants testified that they were paid up to January 3, 2020.

## **Analysis**

35. I have reviewed the testimony and the evidence of the landlords and the tenants. I find that the tenants were responsible for the power bill. They had the power taken out of their name on January 3, 2020. As the termination notice the tenants served was not a proper notice and the landlords were awarded rent for the period January 3 – February 24, 2020, the claim for payment of the power bill succeeds in the amount of \$254.51.

## **Decision**

36. The landlords' claim for the payment of the power bill succeeds as per the following:

a. Power bill owing for January 2020 .....\$254.51

### **Issue 5: Compensation for damages - \$500.00**

#### Landlord Position

37. The landlords testified that the tenants left garbage behind and the unit had to be cleaned. They left a mattress, plastic totes, bed railing and bags of household garbage. They paid [REDACTED] \$120.00 to remove the garbage.

38. Landlord2 testified that the unit had to be cleaned when the tenants vacated. She hired a person to clean. The person was cleaning for a couple of hours when she had to get some help on the cleaning. The cleaning consisted of the entire unit such as the windows, window ledges, floors, stove and the oven. The cleaners had to clean the oven three times. The landlords paid the cleaners \$380.00 for the cleaning.

39. The landlords submitted into evidence 10 photographs of the unit and the items left behind (LL #3), a receipt from [REDACTED] in the amount of \$120.00 (LL #4) and a receipt from [REDACTED] in the amount of \$380.00 for cleaning (LL #5).

#### Tenant Position

40. The tenants testified that these items were in the unit when they moved in. They never used the oven and the window ledges were dirty when they moved in. The dirt on the floor and the box by the fireplace was left by the electrician. They stated that shortly after they moved into the unit, the landlords hired a cleaning lady to clean the unit, the lady cleaned the kitchen and the two bathrooms.

## **Analysis**

41. I have reviewed the testimony and the evidence of the landlords and the tenants. I have determined that there are 2 issues that need to be addressed; (i) are the tenants responsible for the garbage removal; and (ii) are the tenants responsible for the cleaning. Based on the photographs presented, I find that there were some items left in the unit. However, the landlords did not present any evidence to establish that the items left behind were the tenants' items nor did they present any evidence showing that there were bags of garbage left at the unit. As a result, the claim for garbage disposal fails.
42. With regard to the cleaning. I find that some cleaning was required when the tenancy ended. Based on the photographs presented, the amount the landlords are claiming is excessive. I award an arbitrary amount of \$100.00 to have the unit cleaned. The claim for cleaning succeeds in the amount of \$100.00.

## **Decision**

43. The landlords' claim for cleaning succeeds as per the following:

a. Cleaning..... \$100.00

## **Issue 6: Application for Security Deposit**

44. Under the authority of Section 47.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

### Tenant Position

45. The tenants testified that they paid an \$890.00 security deposit on July 8, 2019.

### Landlord Position

46. The landlords acknowledge that an \$890.00 security deposit was paid in July 2019.

## **Analysis**

47. An \$890.00 security deposit was paid. The landlords shall retain the security deposit as the landlords' claim for payment of rent, late fee and the power bill

has been successful. The interest rate on security deposits for the period 2019 – 2020 is 0%.

### **Decision**

48. The security deposit shall be disposed of as outlined in this decision and attached order.

### **Issue 7: Hearing expenses - \$62.86/\$20.00**

49. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

#### Tenant Position

50. The tenants paid an application filing fee in the amount of \$20.00; \$24.78 for 3 flash drives; \$16.80 for printing; and \$1.28 to send the affidavit to Residential Tenancies for a total of \$62.86. The tenants are seeking these costs.

#### Landlord Position

51. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

### **Analysis**

52. The cost the tenants and the landlords incurred to make the application and the cost the tenants incurred to purchase the flash drives and printing of the documents are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. The tenants' claim has been unsuccessful. As the tenants' claim has been unsuccessful, the claim for hearing expenses fails.
53. The landlords' claim has been partially successful. As the landlords' claim has been partially successful, the landlords' claim for hearing expenses succeeds in the amount of \$20.00.

### **Decision**

54. The landlords' claim for hearing expenses succeeds in the amount of \$20.00.

## Summary of Decision

55. The landlords are entitled to the following:

a. Payment of rent.....	\$2137.96
b. Late fees .....	\$75.00
c. Payment of utilities .....	\$254.51
d. Compensation for cleaning .....	\$100.00
e. Hearing expenses .....	\$20.00
f. <b>Less the security deposit .....</b>	<b><u>(\$890.00)</u></b>
<b>g. Total owing to the landlords .....</b>	<b>\$1697.47</b>

June 3, 2020

Date

Residential Tenancies Section