

## Residential Tenancies Tribunal

Decision 20-0268-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:05 a.m. on August 18, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing through a conference call.
3. The respondents, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, participated in the hearing through a conference call.

### Preliminary Matter:

4. The tenant amended the claim for return of rent from \$10,250.00 to \$9,100.00.
5. The landlords amended the claim for the payment of late fees from \$53.00 to \$75.00.
6. Both parties were seeking validity of the termination notice. As the tenancy was ended, this matter was discontinued.

## Issues before the Tribunal

7. The tenant is seeking the following:
  - a. Refund of rent in the amount of \$9,100.00;
  - b. Payment of utilities in the amount of \$1600.00;
  - c. Return of the security deposit in the amount of \$550.00;
  - d. Hearing expenses.
8. The landlords are seeking the following:
  - a. Compensation for inconvenience in the amount of \$60.00;
  - b. Payment of rent in the amount of \$954.83;
  - c. Compensation for damages in the amount of \$400.00;
  - d. Payment of late fees in the amount of \$75.00;
  - e. Application of the security deposit;
  - f. 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 10, 14, 15, 18 and 19 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 - \$9100.00

### Tenant Position

11. The tenant testified that she moved into the unit on July 1, 2018 for a one year term with rent set at \$1100.00 per month due on the 1<sup>st</sup> of each month. When the term ended the tenancy converted to month to month. She is seeking a refund of rent for the period October 2019 – June 2020 in the amount of \$9100.00; \$1100.00 for each month for the months of October 2019 – March 2020; \$1000.00 for each month for the months of April and May 2020; and \$500.00 for the month of June 2020 because the landlords would not let her out of the lease nor would they carry out repairs to the unit.
12. The tenant testified that she requested repairs on March 15, 2019 through facebook messenger. On May 28, 2020 she gave the landlord a hand written note requesting repairs. The next day she was served with a termination notice.

13. She said that she had issues with the water from the day she moved into the unit. The water system was not working properly. The water was always yellow and stinky. There were stains on the bathtub from the water. No matter how many filters or bags of salt she used, she couldn't get rid of the smell.
14. She said she had issues with the toilet 3 times while she lived in the unit. The 3<sup>rd</sup> time it happened was on June 11, 2020. Also there was a leak in the basement from the time she moved into the unit as there was a crack in the foundation.
15. The tenant testified that she complained to the landlords that the house was very drafty. In September 2019, the landlord put weather stripping on one of the three doors. Also in September 2019, he replaced the oil tank with baseboard heaters. She said that he never installed enough heaters in the unit and that there were no heaters installed in the basement.
16. The tenant testified that the front entrance door needed to be replaced because water was coming in through the door. The place was drafty.
17. The tenant submitted into evidence photographs of the toilet, the steps of the stairs and the bathtub (T #2), copies of facebook messenger messages (T #2). One message dated January 21, 2019, in which the tenant was asking to move out. Another message dated March 15, 2019 was concerning repairs to doors. Also submitted into evidence was a video of the entrance door (T #3).

#### Landlord Position

18. Landlord2 testified that the tenant had a one year lease at the start of the tenancy. When that term had expired all she was required to give was a month's notice to vacate the unit. On May 28, 2020 they gave the tenant a notice of what repairs they would be carrying out over the summer. The next day the tenant gave them a letter requesting repairs. They didn't receive any request for repairs during the period October 2019 – May 2020. During the tenancy if they received any requests for repairs, the repairs were carried out. She testified that when the tenant moved in there was a leak in the basement. There was a crack in the concrete. They applied a product to the crack hoping that would correct the problem. The tenant did not have an issue with this solution.
19. Landlord2 testified that on March 28, 2020 they went to put some sealant around the windows. The tenant said no because of Covid-19.
20. Landlord1 testified that anytime repairs were requested, the repairs were carried out. The three times she had a problem with the toilet he went to the unit to correct the problem. In October 2019 he had the septic tank cleaned

out. When the tenant moved into the unit, it was explained to her on how to use the water system. She agreed to let them know when the filter needed to be replaced. She also agreed to put the salt in the system. He said that he had the water tested in June 2020 and the water was fine.

- 21 Landlord1 acknowledges that the oil furnace was replaced with baseboard heaters in the fall of 2019. When she complained about the doors being drafty he put weather stripping around the door. The tenant offered to install the weather stripping. He agreed and he never heard anything from the tenant after she installed the weather stripping.

## **Analysis**

22. I have reviewed the testimony and the evidence of the tenant and the landlords. I have determined that there is one issue that needs to be addressed; is the tenant entitled to a refund of rent for the period October 2019 – June 2020. I find that the tenant did not present any evidence that the landlords were served with a written request listing the repairs that needed to be carried nor did she present any photographs to show the condition of the unit prior to October 2019. Also, no evidence was presented as to why the rent should be refunded. As the tenant did not present any evidence to show that repairs were needed to the unit or why the rent should be refunded, the claim for refund of rent fails.

## **Decision**

23. The tenant's claim for refund of rent fails.

## **Issue 2: Payment of utilities - \$1600.00**

### Tenant Position

24. The tenant testified that the place was drafty and the light bill was high. She is seeking \$200.00 per month for payment of the utilities for the period October 2019 to May 2020. The power bill was \$200.00 above her budget. The extra power used was due to the landlords' negligence; they did not carry out repairs on the house. She said before she moved into this unit she lived in a three story house. The power bill would be between \$150.00 and \$200.00 per month. The tenant submitted a copy of the power bills for the months of November and December 2019 (T #5). The power bill for November 2019 was \$297.84 and the power bill for December 2019 was \$383.83.

### Landlord Position

25. Landlord1 testified that when the tenant agreed to rent the unit it was pay your own utilities. They never discussed the amount of the power bills.

26. Landlord2 testified that during the tenancy they gave the tenant a credit of \$600.00 in total to help with the power bills.

### **Analysis**

27. After reviewing the testimony and the evidence of the tenant and the landlords, I have determined that there is one issue that needs to be addressed; are the landlords responsible for the payment of the utilities. I find that the tenant was responsible for her own utilities. The tenant did not submit any documentation to show that the landlords agreed that they would pay the difference if the power bill went above \$200.00. The claim for refund of the power bill fails.

### **Decision**

28. The tenant's claim for refund of the power bill fails.

### **Issue 3: Compensation for inconvenience - \$60.00**

#### Landlord Position

29. Landlord1 testified that they are claiming \$60.00 for gas for the trips he made to check on the unit after the tenant vacated as the tenant left a fish tank at the unit. The tank had fish in it.

#### Tenant Position

30. Tenant testified that she told the landlords that she would be out on July 8, 2020. She couldn't get her belongings out until later. The landlords changed the locks on July 11, 2020.

### **Analysis**

31. I have reviewed the testimony and the evidence presented of the landlords and the tenant. I find the cost for the gas the landlords are claiming for going back and forth to check on the unit would be a normal cost associated with the carrying out of their business. The claim for compensation for inconveniences fails.

### **Decision**

32. The landlords' claim for compensation for inconveniences fails.

#### **Issue 4: Payment of rent - \$954.83**

##### Landlord Position

33. The landlords testified that they received \$500.00 towards June's rent leaving a balance of \$600.00. A termination notice was served on the tenant on June 21, 2020 to vacate on July 2, 2020 because the full amount of rent for June 2020 was not paid. They did not receive any monies towards July's rent. On July 11, 2020 they changed the locks to the unit. The amount owing for July 1 – 11, 2020 is \$354.83. The total amount owing is \$954.83.
34. After the tenant gave her testimony landlord2 testified that they agreed to reduce her rent by \$100.00 if her income was reduced. She told them she had a letter stating her income was reduced. When they asked for a copy of the letter the tenant refused. The landlords presented a copy of the termination notice dated June 21, 2020 (LL #2).

##### Tenant Position

35. The tenant acknowledges that she paid \$500.00 towards June's rent. She said rent for the month of June 2020 was supposed to be \$1000.00 because she lost her job due to covid-19. She had a letter stating her income was reduced. She offered the letter a few times but the landlords refused.

#### **Analysis**

36. I have reviewed the testimony of the landlords and the tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenant acknowledges that the last time she paid rent was in the amount of \$500.00 towards June's rent. A termination notice was served under section 19 failure to pay rent to vacate on July 2, 2020. The landlords changed the locks on July 11, 2020. As the tenant acknowledges that the full amount of rent was not paid for June and she did not pay for July 2020, the claim for payment of rent succeeds in the amount of \$600.00 for June 2020 and \$396.77 for the period July 1 – 11, 2020 ( $\$1100.00 \times 12 \text{ months} = \$13,200.00 \div 366 \text{ days} = \$36.07 \times 11 \text{ days} = \$396.77$ ) for a total of \$996.77 ( $\$600.00 + \$396.77 = \$996.77$ ).

## Decision

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

a) Rent owing for June 2020 .....	\$600.00
b) Rent owing for July 1 – 11, 2020.....	<u>\$396.77</u>
c) <b>Total rent owing</b> .....	<b>\$996.77</b>

### Issue 5: Late fees - \$75.00

#### Landlord Position

38. The landlords testified that they are seeking payment of late fees in the amount of \$75.00 as the rent is in arrears since June 2020.

#### Tenant Position

39. The tenant stated that she wasn't really late paying the rent. She was paid up to June 16, 2020.

## Analysis

40. The rental arrears has been established in paragraph 33 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 June 2020 the late fees have exceeded the maximum amount of \$75.00.

## Decision

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

### Issue 6: Compensation for damages – \$400.00

#### Landlord Position

42. Landlord1 testified that the tenant was responsible for the mowing of the lawn. When the tenancy ended, the grass was up to his hips. It took 4 people 2 days to mow the lawn. He is claiming \$100.00 for the mowing of the lawn. This includes gas and labour.

43. The landlords testified that they disposed of the 18 bags of garbage that was left in the garage. Also, there are a number of items left outside the property and some furniture left inside. These items are still at the property. They

checked around on the cost to have these items removed. The average fee for garbage disposal is \$100.00.

44. The landlords testified that the bottom section of the garage door was damaged. The cost of a new door would be \$1000.00 so they are estimating \$200.00 to have the section replaced.
45. The landlords submitted photographs of the rental unit (LL #3).

#### Tenant Position

46. The tenant testified that she wasn't physically fit to mow the lawn before she vacated. The landlords changed the lock before she had a chance to remove the bags of garbage. When she moved into the unit, the garage door was damaged and there were items left in the garage by the landlords. At the start of the tenancy landlord1 asked if he could leave these items in the garage. She agreed.

#### **Analysis**

47. I have reviewed the testimony and evidence of the landlords and the tenant. I find that there is one issue that needs to be addressed; is the tenant responsible for the damages. I find that the tenant said that she was not physically fit to mow the lawn before she vacated. However, the landlords did not provide any evidence or any photographs to show the condition of the lawn when the tenancy ended or that it required mowing. As the landlords failed to substantiate that the lawn needed to be mowed, the claim for mowing of the lawn fails.
48. With regard to the bags of garbage left in the garage, the items left outside and the furniture left inside. The tenant acknowledges there were some bags of garbage and a pile of wood left behind. The landlords did not submit any evidence to show what was left behind or a cost to dispose of the items and the bags of garbage, as a result the landlords' claim is unsuccessful.
49. With regard to the repairs to the garage door. The landlords did not submit any evidence to show the condition of the door at the start or at the end of the tenancy. The claim for repairs to the garage door fails

#### **Decision**

50. The landlords' claim for damages is unsuccessful.

## **Issue 7: Application for Security Deposit**

51. 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

52. The tenant testified that she paid a \$550.00 security deposit on June 11, 2018.

### Landlord Position

53. The landlords acknowledges that a \$550.00 security deposit was paid in June 2018.

## **Analysis**

54. Both the landlord and tenant acknowledge that a security deposit in the amount of \$550.00 was paid in June 2018. The interest rates set out by the minister on security deposits for 2018 – 2020 is set at 0%. The security deposit plus accrued interest is then \$550.00. As the landlords have been successful in the claim for payment of rent and late fees, the landlords shall retain the security as outlined in this decision and order.

## **Decision**

55. The landlords shall retain the security deposit as outlined in this decision and attached order.

## **Issue 8: Hearing Expenses - \$20.00**

56. 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

57. The tenant paid the \$20.00 application filing fee. She is seeking this cost.

### Landlord Position

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

### **Analysis**

59. The cost the tenant and landlords incurred to make the applications is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the landlords' claim is partially successful, the tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

### **Decision**

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


### **Summary of Decision**

61. The landlords are entitled to the following:

a) Payment of rent.....	\$996.77
b) Late fees .....	\$75.00
c) Hearing expenses .....	\$20.00
d) <b>Less the security deposit.....</b>	<b>(550.00)</b>
e) <b>Total owing to the landlords .....</b>	<b>\$541.77</b>

September 15, 2020

Date

  
Residential Tenancies Section