

Residential Tenancies Tribunal

[REDACTED] Decision 20-0283-05
[REDACTED]

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:38 am on 09 October 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", also participated. He was represented by [REDACTED] ("[REDACTED]").

Issues before the Tribunal

4. The tenant is seeking the following:
 - An order for a refund of the security deposit in the amount of \$709.00,
 - An order for a refund of rent in the amount of \$260.69, and
 - An order for compensation for damages in the amount of \$9142.98.
5. The landlord is seeking the following:
 - A determination of the validity of a termination notice issued to him on 10 February 2020,
 - An order for a payment of rent in the amount of \$2475.00, and
 - An order for a payment of "other expenses" totaling \$103.50.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. Also relevant and considered in this case are section 10 and 23 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Validity of Termination Notice

Issue 2: Refund of Rent - \$260.69

Issue 3: Rent Owing - \$2475.00

Relevant Submissions

The Tenant's Position

8. The tenant and the landlord entered into a 1-year, fixed-term rental agreement on 01 August 2018 and in 2019 that agreement was renewed for another year, expiring on 31 July 2020. A copy of that renewed lease was submitted with the tenant's application.
9. The agreed rent was set at \$945.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$709.00.
10. The rental unit is a condominium in a building containing [REDACTED] other condominiums. The landlord resides out of province and the unit is managed by [REDACTED], on his behalf. [REDACTED] stated that the complex is governed by a Board of Directors, who have in turn hired a Building Manager, [REDACTED]. [REDACTED], the part-time superintendent, works for [REDACTED] to deal with daily maintenance issues at the complex.
11. On 17 January 2020 a major snowstorm hit St. John's and the tenant stated that the stairs to the complex, as well as the parking lot, were heavily snowed in. The tenant stated that she had contacted [REDACTED] on several occasions after the storm inquiring as to when the steps and parking lot would be cleared. She stated that on 31 January 2020 she saw a notice from [REDACTED], posted in the common area of the complex, indicating that the residents of the complex were to remove their cars from the lot on 01 February 2020 so that snow removal could commence.
12. The tenant stated that she removed her car on the morning of 01 February 2020, as requested, and returned 2 hours later to discover that the snow removal operations had not yet gotten underway. She stated that she parked her car in the lot and returned to her apartment. 2 hours after returning to her apartment, [REDACTED] called to inform her that the contractors were ready to begin the snow removal and she proceeded to the parking lot.
13. The tenant stated that she was studying for exams during this time and did not want to leave her apartment for an extended period and she also stated that there was no where that she could leave her car while the lot was being plowed. She stated that she spoke with the contractors and they agreed that she could

park at one end of the lot while they were removing snow at the other end, and they would contact her when they needed her to move the car back.

14. The tenant testified that during this conversation with the contractors, █ came onto the parking and started yelling at the contractors and then started to yell at her. She stated that he was using profanities while yelling at her ("the 'b'-word) and he accused her "of ruining his life". She testified that she attempted to drive away, but that █ then put one hand into her open window and he was hanging onto the door with his other hand. She stated that █ continued to yell at her and stated that she "was the most difficult person to deal with" and asked why the tenant was "doing this to him?" The tenant stated that she was unable to close the window to her car as █ was pushing down on it and he had his other hand waving in her face.
15. The tenant stated that during this altercation she telephoned █ who instructed █ to stop yelling at the tenant and to "back off". The tenant then went to her apartment and spoke on the telephone with █ for about 30 minutes. She testified that she informed █ that, as a result of this incident, she did not feel comfortable living at the unit while █ was working there. The tenant stated that █ informed her that █ could act erratically at times, but she was given assurances by █ that an incident such as this would not happen again and she also promised to speak with the building manager, █.
16. However, the tenant claimed that she felt that █ was trying to brush this incident "under the rug" and that she was not taking her complaint seriously. She stated that she attempted to call █ a few days later, on 3 different occasions, but he did not respond to her calls. The tenant testified that she felt that no action had been taken to address the incident which had occurred on 01 February 2020 and that no one cared for her wellbeing.
17. The tenant testified that in the days after this incident she felt anxious and panicked and she was afraid of how █ would act if she were to run into him again. She claimed that when he was working in the building she would avoid going past his office and she would wait until █ left the complex before she would leave her room.
18. Besides the issue with █, the tenant also complained that the occupants in the neighbouring condominium were stalking her. She stated that they were constantly walking up and down the hallway outside of her condominium and that they would frequently be staring at her. She also complained about an incident where she was in her apartment one day and her neighbour was trying to enter her unit.
19. The tenant stated that she had also relayed her concerns about her neighbours to █ and she was advised by her to contact the police. She stated that she did contact the police and she was advised by them that she should terminate her rental agreement and move out of the complex.

20. Accordingly, on 10 February 2020 she sent the landlord a termination notice and a copy of that notice was submitted with her application. 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 23 February 2020. The tenant testified that she moved out on 21 February 2020 and that she returned the keys to the landlord on the following day.
21. The tenant stated that as her tenancy ended on 23 February 2020, as per her termination notice, she is entitled to a refund of a portion of the rent she had paid for that month. She calculates that she is entitled to \$260.69 for the period from 24 February to 29 February 2020.

The Landlord's Position

22. Regarding the incident that had occurred in the parking lot on 01 February 2020, ■■■■■ stated that she did recall that she had received a call from the tenant on that day and that she could hear a "ruckus" in the background, though she was unclear as to what was happening. However, she stated that she was not speaking to ■■■■■ on that day or did not recollect instructing him to back down.
23. ■■■■■ also acknowledged that she did speak to the tenant later on that day and she did relay to ■■■■■ the tenant's concerns about ■■■■■. ■■■■■ pointed out, though, that ■■■■■ is not an employee of hers and she also pointed out that she is not responsible for the snow clearing on the parking lot.
24. At the hearing, ■■■■■ read out an e-mail she had received from ■■■■■ about the complaint that she had made to him on the tenant's behalf. In that e-mail, ■■■■■ states that he had spoken with ■■■■■ and he acknowledged that he had engaged in a heated conversation with the tenant on 01 February 2020. ■■■■■ reports that ■■■■■ had informed him that the tenant had refused to remove her car from the parking lot on that day and he had become frustrated as a result. However, ■■■■■ reported that ■■■■■ had stated that their interaction was nothing more than an argument.
25. With respect to the termination notice that the tenant had issued her, ■■■■■ stated that she had assumed that that notice was issued because of the complaints she had received from the tenant about the alleged stalking behaviour of her neighbouring tenants. ■■■■■ acknowledged that she had instructed the tenant to call the police, but she stated that this was not because of the incident which had happened with ■■■■■ on 01 February 2020, but because of the tenant's complaints about her neighbours.
26. Regarding those complaints, however, ■■■■■ argued that they were unfounded. She stated that no police report was submitted at the hearing and when she inquired of the police about their investigation, they refused to provide her with any information. She also pointed out that she was not contacted by the police

or asked any questions about the stalking allegations and she stated that neither [REDACTED] nor the landlord were contacted either.

27. [REDACTED] argued that because allegations of stalking were unfounded and because the argument that the tenant had had with [REDACTED] was minor and, in any case, unrelated to their landlord/tenant relationship, the termination notice the tenant had issued to her was therefore invalid.
28. [REDACTED] argued that as this tenancy was not set to expire until 31 July 2020 and as the tenant had not issued her a valid termination notice, she continued to be responsible for rent even after she moved out. [REDACTED] stated that she started advertising the unit for rent in the first week of March 2020 and she was able to secure a new tenant for 15 May 2020.
29. [REDACTED] stated that the unit sat vacant for March and April 2020 and she suffered a loss of rental income for that period totalling \$1890.00 (\$945.00 per month x 2 months). She also testified that the rate of rent for the new tenancy which commenced on 15 May 2020 was dropped to \$900.00 from \$945.00 per month. Her new tenants only paid a half month's rent for May 2020—\$450.00—and \$900.00 for each of June and July 2020. She argued that she is also entitled to \$585.00 in compensation for the loss of rental income she suffered for those 3 months (\$495.00 for May 2020 and \$45.00 for each of June and July 2020).

Analysis

30. Statutory condition 7(b), set out 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.**

31. Regarding the complaints the tenant had made about the alleged stalking, I agree with █ that there was insufficient evidence submitted at the hearing to establish, on the balance of probabilities, that her neighbours were engaging in such activities. I found the tenant's description of these events to be vague and it seems just as probable that there could be other explanations as to why her neighbours were roaming the hallways at the complex. In any case, as this was a condominium building, and as her neighbours were not tenants of the landlord, their interactions cannot impact on the landlord-tenant relationship under consideration here.
32. I don't agree with █, though, that any interactions with █ can likewise be dismissed. Through their lease, the landlord had agreed to provide snow clearing services to the tenant and those services were in turn contracted by the condominium's board of directors, through the building manager to the superintendent, █. It does not make any difference who cleared the snow, whether it was the landlord, or someone he had, directly or indirectly, hired to do it for him, as that service was provided for in the lease it touches on their landlord-tenant relationship. (For instance, if █ failed to clear the snow, the tenant would rightly be able to make a legitimate complaint to the landlord that he had failed to live up to his obligations as set out in the lease. He could not shrug off that complaint by saying that █ is not his employee.)
33. With respect, then, to the incident which occurred on 01 February 2020, I found the testimony of the tenant to be believable and I accept her claim that █ had been yelling at her, that he was using derogatory language and that he had put his hand through her car window and was waving it in her face. That testimony is in part corroborated by █ herself who testified that she heard a "ruckus" on the line when the tenant phoned her on that day. In the statement that █ read out

at the hearing from [REDACTED], he also acknowledged that [REDACTED] had been "argumentative" and their conversation had been "heated".

34. I find that [REDACTED]'s behaviour, as described by the tenant, was unreasonable and antisocial and I also accept her claim that she suffered a certain amount of anxiety and fear as a result. That constitutes an interference with her quiet and peaceful enjoyment and I therefore find that she was in a position to issue the landlord a short termination notice under section 23 of the Act.
35. As the termination notice issued to the landlord meets all the requirements set out in the *Act*, it is a valid notice and the tenancy was terminated on 23 February 2020.
36. As the tenancy ended on 23 February 2020, I agree with the tenant that she is not required to pay any rent after that date. I therefore find that she is entitled to a refund of \$195.52 (\$945.00 for February 2020 ÷ 29 days x 6 days overpayment = \$195.52).

Decision

37. The termination notice issued to the landlord on 10 February 2020 is a valid notice.
38. The tenant is entitled to a refund of rent in the amount of \$195.52.

Issue 4: Compensation for Damages - \$9142.98

Relevant Submissions

The Tenant's Position

39. The tenant stated that she had incurred significant costs as a result of having to vacate the rental unit prematurely, which she claimed she otherwise would not have incurred had she been able to continue to peacefully enjoy her apartment until the lease expired. With her application she submitted the following breakdown of the costs she is seeking here:

- Movers \$175.00
- Airfare for [REDACTED] \$442.98
- Taxi Fare for [REDACTED] \$210.00
- Lost Earnings for [REDACTED] \$3200.00
- Transfer Internet \$115.00
- Mental Agony and Stress \$5000.00
- Total \$9142.98

Movers

40. The tenant stated that she had found a new apartment, located less than 10 km from the residential complex, and she hired movers to transport her possessions to her new apartment. She testified that she was charged \$175.00 to hire these movers. No receipt was submitted at the hearing.

Airfare, Taxi Fare, Lost Earnings for [REDACTED]

41. The tenant stated that after she issued the landlord the termination notice, she needed assistance to move out of her unit and her mother agreed to fly from [REDACTED] to help. In addition to providing assistance with the physical aspects of moving, the tenant stated that her mother was also providing her with emotional support.

42. In support of the costs she is seeking here, the tenant submitted a receipt from Air Canada showing that [REDACTED] was charged \$442.98 for return airfare from [REDACTED]. No receipts were submitted for the costs of hiring taxis and no evidence was submitted showing that [REDACTED] had lost \$3200.00 in earnings.

Transfer Internet

43. The tenant also stated that she was charged \$115.00 to have her internet service disconnected from the rental unit and hooked up in her new apartment. No invoice or receipt was submitted at the hearing.

Mental Agony and Stress

44. The tenant also complained that she had suffered mental anguish because of the incident on 01 February 2020 and she stated that she was fearful of [REDACTED]. She testified at the hearing that she was also nervous that, as St. John's is such a small town, she could accidentally bump into him one day and she does not know how he would act.

45. The tenant is seeking \$5000.00 in compensation for her pain and suffering. She offered no explanation at the hearing as to how she arrived at that dollar figure.

The Landlord's Position

46. [REDACTED] stated that the submitted receipt for [REDACTED]'s airfare was incomplete and that there were some pages missing. She also pointed out that the tenant presented no receipts for the costs of the movers, for the taxi fare, the lost earnings or the transfer of the internet.

47. [REDACTED] also argued that there was no need for [REDACTED] to come to St. John's to help the tenant move. She stated that the tenant's rental unit only measured 600 square feet, that the tenant did not own very many possessions and that it would

have been much cheaper for her to hire someone locally to help her pack her items.

Analysis

48. As I indicated in the previous section, I agree with the tenant that because of the incident which had occurred on 01 February 2020 she was in a position to terminate her agreement, on short notice, under the peaceful enjoyment provisions set out in the *Residential Tenancies Act, 2018*.
49. I am also of the view that because the tenant was required to vacate the unit prematurely because her peaceful enjoyment had been interfered with, she is entitled compensation for any reasonable costs she would have incurred in moving residences.
50. The costs of hiring movers and the costs incurred in disconnecting and reconnecting internet and cable services are reasonable and expected costs when making such a move and I find that the landlord is therefore responsible for compensating the tenant for them. However, with respect to those 2 items, the tenant failed to present any evidence to the board to corroborate the costs she is seeking here. As such, those claims do not succeed.
51. Regarding the costs of having █ fly from █ to help the tenant move, I find that these claims also fail. Again, the tenant failed to establish to the Board's satisfaction that █ had spent \$210.00 on taxi fare or that she had lost \$3200.00 in wages. But furthermore, I find that these costs exceed what would be reasonably expected in a move from 1 small apartment to another apartment only 10 km away. Even if the tenant was unable to complete the move herself, an award of \$4000.00 is excessive for the costs of paying someone to assist her in moving.
52. I also find that the tenant's claim for compensation for her pain and suffering does not succeed. The tenant presented no evidence to establish that she had incurred \$5000.00 as a result of the anxiety she suffers because of the incident which took place on 01 February 2020. I also pointed out to the tenant at the hearing that I can only make an award for compensatory damages and that any decision about pain and suffering would exceed the competence and jurisdiction of this Board.

Decision

53. The tenant's claim for compensation for damages does not succeed.

Issue 5: Other Expenses – \$103.50

Relevant Submissions

The Landlord's Position

54. █ stated that after the tenant moved out, she had to hire a cleaner to clean the bathroom and the 2 kitchen appliances. She testified that the unit also needed an overall general cleaning. She stated that she was charged \$80.00 to have that cleaning completed. No photographs or receipts were submitted with her application.
55. █ also complained that the tenant neglected to return the parking pass that was provided to her when she moved in and the landlord had to purchase a new one at a cost of \$23.50. No receipt was submitted with the application.

The Tenant's Position

56. The tenant stated that she had scrubbed down the unit before she vacated and she testified that it was "immaculate" when she moved out. She also claimed that that the unit was already dirty when she moved into it in 2018.
57. Regarding the parking pass, the tenant stated that she did not realize that she had to return it after she vacated and she stated that she would have returned it had she been asked.

Analysis

58. █ presented no evidence to corroborate her claim that any cleaning was required at the unit after the tenant moved out (e.g., photographs, condition reports) and no receipt showing that she had incurred any costs to hire a cleaner. Hence, that part of her claim does not succeed.
59. █ also failed to establish that a new permit would costs \$23.50 as no receipt was submitted with her application. That claim, too, fails.

Decision

60. The landlord's claim for "other expenses" does not succeed.

Issue 5: Security Deposit

61. The tenant paid a security deposit of \$709.00 on 01 July 2018 and receipt of that deposit is acknowledged in the submitted lease. As the tenant's claim has been successful, the landlord shall refund that full deposit.

Issue 6: Hearing Expenses

62. As the tenant's claim has been successful, the landlord shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

63. The tenant is entitled to the following:

- a) Refund of Rent.....\$195.52
- b) Refund of Security Deposit\$709.00
- c) Hearing Expenses.....\$20.00
- d) Total Owing to Tenant.....\$924.52

09 February 2021

Date

John R. Cook
Residential Tenancies Tribunal

