

Residential Tenancies Tribunal

[REDACTED] Decision 19-0021-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:05 p.m. on February 5, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2 respectively, participated in the hearing.
3. The landlord, [REDACTED], hereafter referred to as landlord1, participated in the hearing. The landlord [REDACTED], hereafter referred to as landlord2 was not present at the hearing but she was represented by [REDACTED].

Issues before the Tribunal

4. The tenants are seeking the following:
 - a. Return of the security deposit;
 - b. Refund of rent;
 - c. Return of possessions;
 - d. Hearing expenses.
5. The landlords are seeking the following:
 - a. Application of the security deposit;
 - b. Compensation for cleaning costs and disposal of items;
 - c. Payment of utilities;
 - d. Hearing expenses.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), section 47.
7. Also relevant and considered in this case are sections 10, 14, 19, 23 and 35 of the Act.

Issue 1: Return of rent - \$475.00

Tenant Position

8. Tenant1 testified that they moved into the unit on October 19, 2017 on a month to month tenancy with rent set at \$950.00 per month due on the 1st of each month. The rent for December 2018 was paid by cheque (T #3). It was withdrawn from the account on December 4, 2018 as per the transaction history from RBC (T #3). They are seeking return of the rent for December 16 – 31, 2018. Tenant1 then testified that on November 30, 2018 landlord1 came to the unit. She was home and her son who was living with her at the time was also home. When the landlord was at the unit she told him they have 4 marijuana plants started in the basement. His face changed and he made a threat. He told her son to get out and if he came back he would be dragging him out. He also said that if anything went on there she would be responsible. She said she asked the landlord to leave and she called landlord2 and told her landlord1 had kicked her son out and that they can't stay there.
9. Tenant1 further testified that on Sunday, December 2, 2018 she called landlord2 and told her they were leaving the end of December and she will bring the notice to her on Monday night. On Monday night when she went to the landlords' house landlord1 came to the door. She gave him the termination notice (T #2) to vacate on January 1, 2019 and he said he was not accepting the notice. He then snatched the paper out of her hand. Tenant1 told him he was a dangerous person and he replied you don't know how dangerous I am. Tenant2 confirms landlord1's response.
10. Tenant1 then stated before she went home after dropping off the notice. She went next door to her neighbor. She told him what happened and he told her to call the police. She called the police and they asked if she wanted to give a statement. She said no she just wanted them to guard her house until she vacated because landlord1 was very distraught. The police said they would guard her house.
11. Tenant1 also testified that on December 4, 2018 she posted a termination notice (T #5) under section 22 of the *Residential Tenancies Act 2000* on the

door of the landlords' residence. The notice was to take effect on December 15, 2018. They vacated on that date.

Landlord Position

12. Landlord1 testified that on November 30, 2018 he went to the unit to retrieve something from the shed. When he was there he noticed the windows in the unit were all steamed up. He went to the door and asked if he could check to see what was causing the windows to steam up. Before he went to go down to the basement the tenant admitted they were growing cannabis. Landlord1 further testified there was shelving across the doorway to block the entrance. They had a grow-up. The grow-up was caged in. He could see a piece of flexible pipe coming out through the top of the cage and it was blowing warm moist air through the basement. He told them he wanted this removed right away. If not he was going to call the police. Landlord1 also said he told them he wanted the gentleman out of his house. The gentleman was the tenants' son.
13. Landlord1 also testified that he is not aware of the termination notice served on December 4, 2018 and he doesn't recall making a threat to the tenant.

Analysis

14. I have reviewed the testimony and the evidence of the tenants and the landlord1 in this matter. As far as I can see there are 2 issues that need to be addressed: (i) was the rent paid for the month of December 2018 and (ii) is the notice issued by the tenants valid. With respect to the issue of the rent being paid. I find the rent was paid as the transaction history for the tenants' RBC account shows the cheque for \$950.00 was cashed on December 4, 2018.
15. With regard to the termination notice being valid, I find the tenants have not supported the claim with corroborating evidence that landlord1 made a threat to the tenants on November 30, 2018.

Decision

16. The termination notice served on December 4, 2018 is not a proper notice and the claim for refund of rent fails.

Issue 2: Return of modem - \$199.00

Tenant Position

17. Tenant1 testified that she left a modem belonging to Bell Aliant at the unit as she was unable to remove the modem. The cost to replace the modem is \$199.00 as per the quote from The Source.bell.ca (T#6).

Landlord Position

18. Landlord1 testified that he is not aware that a modem was left behind. He will check to see if it is at the unit. If it is still at the unit, the tenants can have it back.

Analysis

19. I have reviewed the testimony of tenant1 and landlord1 and I find tenant1 left the modem behind but landlord1 has not seen it. He will check with the new tenants and if the modem is there the landlords will return the modem to the tenants.

Decision

20. The claim for compensation for replacement of the modem fails.

Issue 3: Payment of utilities - \$289.40

Landlord Positon:

21. Landlord1 testified that the tenants were responsible for the payment of the power bill. The power bill was kept in their name as there was one meter on the house. The upstairs tenants would be responsible for 60% and the downstairs tenants would pay 40%. Landlord1 said they didn't receive the payments for the months of November and December. He presented two Newfoundland Power bills (LL # 1) for the period November 8 – January 9, 2019. The amount owing for November 2018 is \$170.40 and the pro-rated amount for December 9 – 31, 2018 is \$119.00.

Tenant's Position

22. The tenants acknowledges that they owe for a portion of the power bill up to December 15, 2018. Tenant1 said she paid landlord2 \$150.00 on November 17, 2018 (T #7) and the landlord advised her through an e-mail (T #8) the rate

was going up to \$170.40 per month as the billing is based on the equal payment plan.

Analysis

23. I have reviewed the testimony of landlord1 and the tenants. I find the tenants acknowledge they owe a portion of the power bill. As the tenants claim for return of the rent for December 16 – 31, 2018 was unsuccessful, the tenants would be responsible for the power bill up to the end of December 2018.

Decision

24. The claim for payment of utilities succeeds in the amount of \$292.99. \$170.40 for the period November 8 – December 8, 2018 and \$122.59 ($\$245.00 \times 60\% = \$170.40 \div 32 \text{ days} = \$5.33 \text{ per day} \times 23 \text{ days} = \122.59) for the period December 9 – 31, 2018.

Issue 4: Cleaning - \$225.00

Landlord Position

25. Landlord1 testified that he spent between 10:00 a.m. and 5:30 p.m. one day in early January 2019 cleaning the unit. He had to clean the fridge, oven, stove, sink, bathtub, windows and window sills. He had to purchase a face mask as there was a smell coming from the fridge. He said the windows had mildew on them and he normally charges \$50.00 per hour for his labour.

Tenant Position

26. Tenant1 testified the unit was spotless when they vacated the unit. She presented photographs of the unit (T #9).

Analysis

27. I have reviewed the testimony of landlord1 and the tenants. I find the landlord did not present any evidence to show the condition of the unit at the end of the tenancy. However, based on the photographs the tenants presented, the unit was clean when the tenants vacated.

Decision

28. The claim for cleaning fails.

Issue 5: Disposal of items - \$375.00.

Landlord Position

29. Landlord1 testified he received a verbal quote in the amount of \$375.00 to remove the items that were left behind and to clean up the backyard. There were windows and buckets left outside and there were items left in the shed. Also there was soil all over the backyard. He further testified he did not receive approval to dispose of the items left behind. The landlord submitted photographs of outside of the property and inside the shed (LL #2).

Tenant Position

30. Tenant1 testified that she owns some of the items in the shed but some of the items belong to the landlord and the downstairs tenant. She said the windows and the buckets belong to them as they had a greenhouse last summer. They are willing to take their belongings. Tenant1 further testified that the soil she dumped in the backyard was good for the ground.

Analysis

31. I have reviewed the testimony of landlord1 and the tenants and the evidence presented. I find the landlord did not get approval to dispose of the items and he did not present any evidence on the cost of the removal and cleanup. Further the tenants acknowledge they own some of the items and they are willing to go to the unit to take their belongings.

Decision

32. The claim for disposal of items fails.

Issue 5: Application for Security Deposit

33. 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.

Landlord Position

34. The landlord testified a \$500.00 security deposit was paid on October 19, 2017.

Tenant Position

35. The tenants are seeking return of the security deposit.

Analysis

36. A security deposit was paid in October 2017. As the landlords have been successful in their claim for payment of utilities the landlords shall retain \$292.99 of the security deposit and return the balance to the tenants as outlined in this decision and order.

Decision

37. The landlord shall retain \$292.99 of the security deposit and return the balance to the tenants as outlined in this decision and attached order.

Hearing Expenses - \$91.75 and \$127.34

38. 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

39. The tenants paid \$26.32 to serve the documents by registered mail; \$45.43 to develop the photographs and \$20.00 to file the application.

Landlord Position

40. The landlords paid an application filing fee in the amount of \$20.00 and \$2.42 to develop photographs. Landlord1 served the application on the tenants and he stated he is charging \$104.92 for the service.

Analysis

41. The costs the tenants and landlords incurred to file the applications, have the applications served and to have photographs developed are considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As both parties are partially successful in their claims, each party shall bear their own hearing expenses.

Decision

42. Each party shall pay their own hearing costs.

Summary of Decision

43. The tenants are entitled to the following:

a) Return of the security deposit.....	\$500.00
b) Less payment of utilities	<u>(\$292.99)</u>
c) Total Owing to Tenants.....	<u>\$207.01</u>

May 3, 2019
Date

[REDACTED]
Residential Tenancies Section