

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0071-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 1:40 p.m. on April 1, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing and was represented by her legal counsel, [REDACTED].

### **Preliminary Matters:**

4. [REDACTED], Paralegal observed the hearing.

### **Issues before the Tribunal**

5. The landlord is seeking the following:
  - a. Validity of the termination notice;
  - b. Payment of rent for March in the amount \$425.00;
  - c. Hearing expenses.
6. The tenant is seeking the following:
  - a. Return of the security deposit - \$425.00;
  - b. Return of rent - \$425.00;
  - c. Payment of utilities - \$75.00;
  - d. Hearing expenses.

## **Legislation and Policy**

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
8. Also relevant and considered in this case are Sections 10, 14, 19, and 23 of the Act and Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.

### **Issue 1: Validity of termination notice, Payment of rent and Return of rent**

#### Landlord Position

9. The landlord stated that the tenant moved into the unit on October 1, 2018 on a month to month tenancy with rent set at \$850.00 per month due on the 1<sup>st</sup> of the month.
10. The landlord testified that on February 11, 2019 she gave the tenant a verbal three month termination notice to vacate the unit. Then on February 13, 2019 she gave the tenant a written termination notice to vacate on May 12, 2019. She said that on January 3, 2019 the tenant notified her that there was no water because the pipes had frozen. Then on February 11, 2019 the tenant informed her that there was no hot water in the house, the pipes had frozen. That same day she asked the tenant if she could send someone into the unit to check out the pipes and the tenant gave her permission. The landlord's partner went into the unit that afternoon. Later that evening she offered the tenant the use of the downstairs unit. She asked the tenant to turn up the heat in the unit. The landlord said the water started running on February 13, 2019 around 1:30 a.m. After the water was thawed she asked the tenant to keep the water running. Then on February 18, 2019 she asked the tenant again if she could run the taps due to the extreme cold temperatures. The landlord said it was an extremely cold period as there was an article on the VOCM website (LL #3) stating that frozen pipes a persistent problem as cold winds chill homes.
11. The landlord testified that she gave the termination notice because she wanted to do some work with the house. The house was about 100 years old and the pipes would need more insulation such as the spray foam insulation. She said after she gave the notice on February 13, 2019 the tenant sent a text message stating the tenant was willing to pay more rent starting March 2019 and she was willing to live there while the renovations were being carried out or she would stay somewhere else for a short term rental.
12. The landlord testified that she received another text message on February 20, 2019 stating that the pipes were frozen. The water was running again on the

evening of February 21, 2019. She again asked the tenant to keep the water running. Then on February 22, 2019 the landlord received a termination notice (LL #1) from the tenant informing her she was terminating the tenancy on February 28, 2019 under section 23, interference with peaceful enjoyment. The landlord said herself and the tenant have been friends for years and in her opinion the tenant served the termination notice in spite because the landlord had served a three month notice. The landlord presented copies of the text messages between herself and the tenant (LL #2).

13. Later in her testimony the landlord testified that the previous tenant had a problem with the pipes freezing in the unit. She said she never notified the tenant of this issue until December 6, 2018.
14. The landlord testified that she received half of the rent for the month of March 2019 on February 8, 2019. She is seeking the balance of the rent as the tenant did not give a month's notice that she was vacating the unit. She testified that she advertised the unit on Kijiji on February 28, 2019. The landlord submitted a copy of the ad (LL #4). The unit was not re-rented for the month of March 2019.

#### Tenant Position

15. The tenant's legal counsel stated the termination notice was given under peaceful enjoyment because the tenant was unable to take baths or showers at convenient times, the random stoppage of water and having to run the taps constantly.
16. The tenant testified that on three occasions she didn't have any water because of the pipes freezing. The first time it happened was on January 3, 2019. She was not sure how long she was without water at that time. On February 11, 2019 the pipes froze again and she was without water until 1:30 a.m. on February 13, 2019. Then on February 20, 2019 the pipes froze and she was without water for a day or two. She testified that she was communicating with the landlord through text messages each time the pipes froze. She said she was constantly running the water and blasting the heat for most of the month of February 2019. The tenant presented copies of text messages between herself and the landlord (T #2)
17. The tenant acknowledges she sent the text message to the landlord that the landlord presented. She testified that she served the landlord with a termination notice on February 22, 2019 and she vacated on February 27, 2019.

18. The tenant further testified that she paid half of the rent for March 2019 in February and she is seeking that money back because she had to move out due to the interference with peaceful enjoyment.

## **Analysis**

19. I have reviewed the testimony of landlord and the tenant and I find there are 3 issues that need to be addressed: (i) is the notice the tenant issued a valid notice; (ii) is the landlord entitled to rent for the balance of March 2019; and (iii) is the tenant entitled to the return of the rent that she paid for March 2019.
20. I find that the tenant served a termination notice under section 23, interference with peaceful enjoyment, on the landlord on February 22, 2019 to vacate on February 28, 2019. The tenant did not demonstrate that the landlord knew that this problem would occur on a regular basis. Also, the tenant failed to show how the landlord could control this situation from occurring on certain dates. The reasoning for the notice was that the tenant was without water for a short period of time and she had to keep the taps running constantly.
21. A notice under section 23, peaceful enjoyment is when the landlord interferes with the tenant's peaceful enjoyment as per section 10.(1)7.

### **10.(1) 7. *Peaceful Enjoyment and Reasonable Privacy* 23.**

*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.*

Further, the tenant failed to establish how the landlord was interfering with her peaceful enjoyment. Thus, the termination notice is invalid.

22. With respect to the payment of rent for March 2019. As the termination notice is not a valid notice, the landlord tried to mitigate her losses in a timely manner as required under statutory condition 10.(1)4. She advertised the unit on Kijiji on February 28, 2018 and the unit was not re-rented for the month of March 2019. In regard to the return of rent for the tenant. The tenant did not terminate the tenancy with a month's written notice as required under section 18.(1)(b).

## **Decision**

23. The termination notice issued by the tenant on February 22, 2019 is invalid. The tenant shall pay the remainder of the rent for the month of March 2019 in the amount of \$425.00.

## **Issue 2 – Payment of utilities - \$75.00**

### Tenant Position

24. The tenant testified that the landlord agreed to compensate her for any increase in utilities as the result of increasing the heat and the running of the water. The landlord gave her a letter acknowledging she would compensate her for the 36 hours (T #3). She said she was without water for 5 days and for most of the month of February she was constantly running the water and the heat was turned up. She said the difference in the power bill for period December 28, 2018 – January 24, 2019 to January 25, 2019 – February 25, 2019 is \$78.72 but she is rounding it off to \$75.00. The tenant submitted a copy of the billing history for the unit for the period October 26, 2019 – February 27, 2019 (T #4).

### Landlord Position

25. The landlord acknowledges she agreed to compensate for the power bill. She testified that she asked the tenant to turn the heat up for 36 hours and on one occasion she asked her to run the hot water. She said the running of the cold water would not increase the power bill.

### **Analysis**

26. I have reviewed the testimony and the evidence of the tenant and landlord and I find the landlord agreed to compensate the tenant for the extra usage of the power. Based on the billing history from Newfoundland Power I find that during the period December 28, 2018 – January 24, 2019 the tenant used 52 KWhs per day and for the period January 25, 2019 – February 25, 2019 the tenant used 65 KWhs per day, a difference of 13KWhs per day at a rate of \$.11391¢ per KWhs. I also find that the issue with the pipes freezing did not start in February until February 11, 2019. The amount the landlord would have to pay the tenant for the extra cost of the power for the period February 11 – 25, 2019 is \$22.21 (15 days x 13KWhs per day = 195 KWhs x \$.11391¢ per KWhs = \$22.21).

### **Decision**

27. The landlord shall pay the tenant the amount of \$22.21 for the cost of the extra use of power for the period February 11 – 25, 2019.

## **Issue 3 – Payment of the security deposit - \$425.00**

28. 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

29. The tenant testified she paid a security deposit in the amount of \$425.00 in October 2018. She is seeking return of the security deposit.

#### Landlord Position

30. The landlord acknowledges the tenant paid a security deposit in the amount of \$425.00.

#### **Analysis**

31. A security deposit was paid in October 2018. As the landlord has been successful in her claim for the payment of rent, she shall retain the \$425.00 security deposit as outlined in this decision and order.

#### **Decision**

32. The landlord shall retain the security deposit as outlined in this decision and attached order.

#### **Hearing Expenses**

33. 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*.

#### Landlord Position

34. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

#### Tenant Position

35. The tenant paid an application filing fee in the amount of \$20.00 and \$16.07 for photocopies. The tenant is seeking these costs.

## Analysis

36. The costs the landlord and the tenant incurred to make the application are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. However, as both the landlord and tenant have been partially successful in their claim, each party shall bear their own hearing expenses.

## Decision

37. Both the landlord and tenant shall bear their own hearing expenses.

## Summary of Decision

38. The tenant is entitled to the following:

- a) Refund of the security deposit ..... \$425.00
- b) Payment of utilities.....\$22.21
- c) **Less the payment of rent .....****(\$425.00)**
- d) **Total Owing to tenant .....****\$22.21**
- e) The termination notice is invalid.

July 17, 2019

Date

Residential Tenancies Section