

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-380-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 20 June 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$2475.00;
 - b. An order for a payment of late fees in the amount of \$75.00; and
 - c. Authorization to retain the security deposit.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone from the hearing room. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the

hearing 10 clear days prior to the hearing date and, where a respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. With her application, the landlord submitted an affidavit stating that she had served the tenant by e-mail on 26 May 2019. She also submitted a copy of that e-mail as well as a screenshot of a text-message he had sent her in which he provides her that e-mail address. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

7. The landlord amended her application at the hearing and stated that she was seeking an additional \$467.50 in rent for a total claim of \$2942.50.

Issue 1: Rent - \$2942.50

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 December 2018 and a copy of the executed lease was submitted with her application (█ #1). The agreed rent was set at \$775.00 and it was agreed that the tenant would pay an additional \$50.00 per month for wi-fi internet.
9. The tenant fell into rental arrears in February 2019 and on 30 April 2019 the landlord issued the tenant a termination notice. A copy of that notice was submitted at the hearing (█ #3). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 11 May 2019.
10. The tenant vacated the unit sometime after 02 May 2019 and the landlord took possession on 07 May 2019 after posting a notice of abandonment.
11. After the tenant moved out the landlord started to immediately advertise the unit for rent and she secured new tenants on 18 June 2019. These tenants paid the landlord a pro-rated rent of \$303.00 for the month of June 2019.
12. The landlord submitted rent records at the hearing showing the payments she had received from the tenant since he had moved in. According to these records, the tenant paid no rent in the months of February, April or May 2019. She is seeking a payment of \$2475.00 for these 3 months.
13. The landlord is also seeking rent for the first 17 days of June 2019. She calculates that the tenant owes her \$467.50 for those 17 days.

Analysis

14. I accept the landlord's testimony and evidence in this matter and I find that the tenant had not paid rent as required for February, April and May 2019.
15. As such, the landlord's claim for a payment of rent or those 3 months succeeds in the amount of \$2850.00 (3 months x \$950.00 per month).
16. I also accept her claim that the tenant owes \$467.50 for the first 17 days of June 2019 ($\$825.00 \text{ per month} \div 30 \text{ days} = \$27.50 \text{ per day} \times 17 \text{ days} = \467.50)

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17. The landlord's claim for a payment of rent succeeds in the amount of \$2942.50

Issue 2: Late fees - \$75.00

Relevant Submissions

18. The landlord has assessed late fees in the amount of \$75.00.

Analysis

19. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

20. Regarding the late fees, the minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

21. As the tenant has been in arrears since 02 February 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

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

Issue 3: Security Deposit

23. It is acknowledged in the lease that the tenant had paid a security deposit of \$387.50. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and order.

Issue 4: Hearing Expenses

24. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the cost of filing this application, receipts totalling \$100.00 for the costs of having affidavits notarized, and receipts totalling \$18.73 for the costs of printing.


25. As the landlords' claim has been successful, the tenant shall pay these hearing expense.

Summary of Decision

26. The landlord is entitled to the following:

- a) Rent Owing\$2942.50
- b) Late Fees\$75.00
- c) Hearing Expenses.....\$138.73
- d) **LESS: Security Deposit..... (\$387.50)**
- e) Total Owing to Landlord\$2768.73

21 October 2019
Date


Joh
Residential Tenancies Tribunal