

Residential Tenancies Tribunal

Decision 19-0074-04

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 12:10 p.m. on August 22, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing by conference call. The applicant, [REDACTED], did not attend the hearing but she was presented by [REDACTED].
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing by conference call. The respondent, [REDACTED], did not attend the hearing but he was represented by [REDACTED].

Preliminary Matters

4. The landlord discontinued the claim for vacant possession and amended the claim for payment of rent from \$750.00 to \$1733.26 up to August 22, 2019.

Issues before the Tribunal

5. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$1733.26;
 - b. Late fees in the amount of \$75.00;
 - c. 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 14, 18, 19, 34 and 35 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Payment of rent - \$1733.26

8. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

9. The landlord testified that the tenants moved into the unit on August 1, 2018 on a month to month tenancy with rent set at \$1000.00 per month due on the 1st of each month. A security deposit of \$1000.00 was paid in installments of \$100.00 per month for the period August 2018 – May 2019. Rent was received each month up to June 2019. On July 9, 2019 a termination notice was sent by a text message to the tenants to vacate on July 20, 2019 because the rent was not paid for the month of July 2019. He testified that he is not sure of the date the tenants vacated but on August 14, 2019 he had a lady go to the unit and pick up the key from the tenant. He never advertised the unit for rent as he had the house on the market. Later in the hearing he testified that he never had any one check on the unit from the time he gave the termination notice until August 14, 2019. He is seeking \$1000.00 rent for the month of July and \$733.26 for the period August 1 – 22, 2019. The landlord submitted a copy of the termination notice (LL #1) and a copy of the lease agreement (LL #2).

Tenant Position

10. The tenant testified that she never received the termination notice by text message on July 9, 2019 but sometime around the end of July 2019 she received a text message about changing the locks without consent and late fees. She said they never paid a security deposit. They paid an extra \$100.00 per month for the period August 2018 to April 2019 and an extra \$200.00 in May 2019 for the last month's rent as per the rental agreement. In May 2019 she notified the landlord that they have bought a house but they never gave a formal termination notice. She further testified that they moved out of the unit on August 2, 2019 and she left the key underneath the barbecue. Since they moved out someone has moved into the unit.

Analysis

11. I have reviewed the testimony and evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find the landlord did not present any evidence to prove that a termination notice was sent by a text message to the tenant. I also find that the tenants did not pay a security deposit. They paid an extra \$100.00 towards the rent each month for the period August 2018 to May 2019 as per the rental agreement. The overpayment of rent would be applied towards July's rent. I also find that the landlord was unable to determine when the tenants vacated the unit. As the landlord failed to determine when the tenants vacated the unit, the claim for the payment of rent for the month of August fails.

Decision

12. The claim for payment of rent fails.

Issue 2: Late fees - \$75.00

Landlord Position

13. The landlord testified they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since July 2019.

Tenant Position

14. The tenant testified that the last month's rent was paid in installments.

Analysis

15. The landlords were not awarded rent as determined in paragraph 12 above. Therefore, the claim for late fees fails.

Decision

16. The landlords' claim for late fees fails.

Issue 3: Application for Security Deposit

17. 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

18. The landlord testified a \$1000.00 security deposit was paid in installments of \$100.00 per month for the period August 2018 to May 2019.

Tenant Position

19. The tenant testified that there was no security deposit paid. The \$100.00 paid each month went towards the last month's rent as per the rental agreement.

Analysis

20. I have reviewed the testimony and evidence of the landlord and tenant. Based on the rental agreement presented I find that there was no security deposit paid. The \$100.00 extra paid each month went towards rent.

Decision

21. The tenants did not pay a security deposit.

Issue 4: Hearing Expenses - \$20.00

22. 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

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

Analysis

24. The cost the landlords incurred to make the application 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 has been unsuccessful, the claim for hearing expenses fails.


Decision

25. The landlords' claim for hearing expenses has been unsuccessful.

Summary of Decision

26. The landlords' claim for the payment of rent, late fees and hearing expenses has been unsuccessful.

December 13, 2019
Date


Residential Tenancies Section