

Residential Tenancies Tribunal

Decision 19-0213-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on April 30, 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, did not attend the hearing.

Preliminary Matters

4. The landlord amended the claim for payment of rent from \$875.00 to \$1750.00 up to April 30, 2019.
5. The tenant was not present or represented at the hearing. Prior to the start of the hearing I called the telephone number on file but I was unable to reach the tenant. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
6. According to Rule 29.05(2)(a) a respondent to an application must be served with the application for dispute resolution 10 clear days prior to the hearing date, and where the 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/she has been properly served.

7. The affidavit of service submitted by the landlord shows that the application for dispute resolution was sent electronically on March 27, 2019 and the tenant has had 33 days to provide a response. The landlord submitted a copy of the e-mail notifying the tenant of the Application for Dispute Resolution and a copy of the response from the tenant. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$1750.00;
 - b. Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 10, 14, 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 - \$1750.00

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

Landlord Position

12. The landlord stated that the tenant moved into the unit on/or about March 1, 2019 for a one year term to start on March 1, 2019 with rent set at \$875.00 per month due on the 1st of each month. The landlord submitted a copy of the lease agreement (LL #1).
13. The landlord testified that he did not receive any monies towards the rent for the month of March and he is also seeking rent for the month of April 2019 as the tenant signed a lease for 12 months. He testified that on March 20, 2019 the tenant notified him through a text message that she was vacating in 8 or 9 days. Then on March 25, 2019 he received another text message from the tenant stating she would be leaving the end of the month. The tenant vacated on March 31, 2019. The landlord presented copies of the text messages (LL #5).

14. The landlord testified that he advertised the unit on NL Classifieds and Kijiji. He said he had the ad bumped up to the top page on Kijiji on March 21, 2019, April 3, 17 and 21, 2019 as per the order history from Kijiji (LL #3).

Analysis

15. I have reviewed the testimony and evidence of the landlord and I find there are two issues that needs to be addressed; (i) was the termination notice a proper notice; and (ii) has the tenant paid rent.

16. With respect to the validity of the termination notice, the termination notice was sent electronically as per section 35(1)(f). However, it is not in the form prescribed by the minister as required, it does not state the name of the recipient, the address of the rental unit nor the section of the Act. The termination notice is invalid.

17. In regard to the rent being paid I find the tenant did not pay the rent for the month of March 2019 and the tenant did not give a two month notice to end the tenancy as required under section 18.(1)(c). Further, the landlord mitigated his losses as he advertised the unit on March 21, 2019. The unit was not re-rented as of the date of the hearing. Consequently, the landlord is entitled to rent for the months of March and April 2019.

Decision

- 18. The landlord’s claim for rent succeeds as per the following:
 - a. Rent owing for March 2019\$875.00
 - b. Rent owing for April 2019\$875.00
 - c. Total arrears.....\$1750.00

Issue 2: Application for Security Deposit

19. 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

20. The landlord testified a \$660.00 security deposit was paid on February 25, 2019. The landlord presented a receipt for the security deposit (LL #2)

Analysis

21. A security deposit was paid in February 2019. As the landlord has been successful in his claim for the payment of rent, he shall retain the \$660.00 security deposit as outlined in this decision and order.

Decision

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

Issue 3: Hearing Expenses - \$20.00

23. 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

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

Analysis

25. The costs the landlord 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*. Therefore, I find the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision


26. The tenant shall pay the landlord's hearing costs in the amount of \$20.00.

Summary of Decision

27. The landlord is entitled to the following:

- a) Payment of rent\$1750.00
- b) Hearing expenses \$20.00
- c) **LESS: Security deposit** (\$660.00)
- d) **Amount owing to the landlord****\$1110.00**

July 5, 2019
Date


Residential Tenancies Section