

Residential Tenancies Tribunal

Decision 19-0451-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on July 8, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] represented by [REDACTED] and [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to the tenant, did not attend the hearing.

Preliminary Matters

4. The landlords called [REDACTED], Resident Manager of [REDACTED], as a witness. [REDACTED] attended the hearing by a conference call.
5. The landlords amended the claim for payment of rent from \$4545.00 to \$6060.00.
6. The tenant was not present or represented at the hearing. Prior to the hearing I called the number on file for the tenant but the call went through to the message manager. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 notice of this hearing was sent electronically to the tenant on June 11, 2019 and the tenant has had 26 days to provide a response. The landlord presented a copy of the e-mail along with 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 landlords are seeking the following:
 - a. Payment of rent in the amount of \$6060.00;
 - b. Late fees in the amount of \$75.00;
 - c. 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 14, 15 and 19 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 - \$6060.00

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 landlords testified that the tenant moved into unit [REDACTED], [REDACTED] on December 1, 2016 for a one year term with rent set at \$950.00 per month. The tenancy converted to a month to month tenancy when the term expired. In September 2018 there was a fire in her unit. On/or about October 1, 2018 they moved the tenant into Unit [REDACTED], [REDACTED] on a temporary basis while they were repairing the unit. The rate of rent was kept the same as the tenant was going to be staying at [REDACTED] for a short stay. On February 26, 2019 the tenant sent them a letter stating she was vacating unit [REDACTED] on March 31, 2019. In the meantime all of the repairs were carried out at unit [REDACTED] the end of February and the unit was ready for the tenant to move back in. The tenant didn't move back into unit [REDACTED] because she gave a notice she was moving out the end of March 2019. They advertised unit [REDACTED] for rent and the unit was re-rented for April 1, 2019.

13. The landlords further testified that in early April 2019 the Resident Manager went to unit [REDACTED] and he discovered that the tenant was still living there even though the tenant gave a notice she was moving out on March 31, 2019. The Resident Manager informed her that if she was going to stay in the unit the rent would be \$1515.00 per month. They testified that they never received any rent from the tenant since March 2019. On June 6, 2019 they served the tenant with a termination notice under Section 19 to vacate on June 17, 2019. On June 7, 2019 they posted a notice of abandonment on the door of the unit and they took back possession of the unit on June 10, 2019.
14. The landlords also testified that the tenant's belongings are still in the unit as of the day of the hearing. On June 24, 2019 the tenant sent an e-mail that she would be at the unit the next day to pick up her belongings. The tenant has never shown up to collect her belongings.
15. The landlords submitted a copy of the letter/termination notice the tenant sent them on February 26, 2019 (LL #1), a copy of the termination notice dated June 6, 2019 (LL #2), a copy of the lease ledger for unit [REDACTED] (LL #3), copies of e-mails between the landlord and tenant for the period June 24 – July 4, 2019 (LL #4) and a copy of the lease agreement for unit [REDACTED] dated November 14, 2016 (LL #5).

Witness Position

16. [REDACTED], witness for the landlord and resident manager of the building, testified that it was his belief that when the tenant gave the termination notice on February 26, 2019 she was not just vacating unit [REDACTED]. She was vacating the building. When he discovered that the tenant was still living in unit [REDACTED] in early April 2019 he informed her that if she was going to be living in that unit ([REDACTED]) she would have to pay the new rate at \$1515.00 per month. She said okay.

Analysis

17. I have reviewed the testimony and evidence of the landlords and the witness. I have determined that there is one issue that needs to be addressed; is rent owing. I find there was a fire in unit [REDACTED] in September 2018. On October 1, 2019 they moved the tenant into [REDACTED] for a short stay while the repairs were being carried out on unit [REDACTED]. On February 26, 2019 the tenant gave them a letter stating that she was vacating unit [REDACTED] on March 31, 2019. At the end of February 2019 the repairs were completed and unit [REDACTED] was ready for occupancy. The tenant did not move back into unit [REDACTED]. The landlords accepted the termination notice and they re-rented unit [REDACTED] for April 1, 2019. I also find that the tenant agreed to stay in unit [REDACTED] at the rate of \$1515.00 per

month. As per the lease ledger the landlords did not receive any rent for the months of April, May and June 2019. Further, the landlords gave a termination notice on June 6, 2017 to vacate on June 17, 2019. The landlords took possession of the unit on June 10, 2019. Therefore, the tenant would be responsible for rent for the months of April and May in the amount of \$3030.00 (\$1515.00 per month x 2 months = \$3030.00). Rent for the month of June can only be awarded up to June 17, 2019, the effective date of the termination notice, in the amount of \$846.77 (1515.00 x 12 months = \$18,180.00 ÷ 365 days = \$49.81 per day x 17 days = \$846.77). The total amount of rent owing is \$3876.77 (\$1515.00 + \$1515.00 + \$846.77 = \$3876.77).

Decision

18. The landlords’ claim for rent succeeds as per the following:

a. Rent owing for April 2019.....	\$1515.00
b. Rent owing for May 2019	\$1515.00
c. Rent owing for June 1 – 17, 2019	<u>\$846.77</u>
d. Total rent owing.....	\$3876.77

Issue 2: Late fees - \$75.00

Landlord Position

19. The landlords testified they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since April 2019.

Analysis

20. The rental arrears have been established in paragraph 18 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has been in arrears since April 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

21. The landlords’ claim for late fees succeeds in the amount of \$75.00.

Issue 3: Application for Security Deposit

22. 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

23. The landlords testified a \$712.50 security deposit was paid in December 2016 for Unit [REDACTED] and the security deposit was transferred to unit [REDACTED] in 2019.

Analysis

24. A security deposit was paid in the amount of \$712.50. As the landlords have been successful in the claim for the payment of rent and late fees, they shall retain the \$712.50 security deposit as outlined in this decision and order.

Decision

25. The landlords shall retain the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

26. 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

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

Analysis

28. 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 was successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision


29. The tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Summary of Decision

30. The landlords are entitled to the following:

a) Payment of rent.....	\$3876.77
b) Late fees	\$75.00
c) Hearing expenses	\$20.00
d) Less the security deposit	<u>\$712.50</u>
e) Total owing to Landlord.....	<u>\$3259.27</u>

November 12, 2019
Date


Residential Tenancies Section