

## Residential Tenancies Tribunal

Decision 19-0468-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:20 a.m. on July 10, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The landlord, [REDACTED], hereafter referred to as the landlord, did not attend the hearing.

### Preliminary Matters

4. The landlord was not present or represented at the hearing. Prior to the hearing I called the telephone numbers on file for the landlord but I was unable to reach him. 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.
5. The affidavit of service submitted by the tenant shows that the notice of this hearing was sent electronically to the landlord on June 28, 2019 and the landlord has had 11 days to provide a response. The tenant presented a copy of the e-mail sent to the landlord along with a copy of the text message the landlord sent to the tenant on March 22, 2019 providing his e-mail address. As the landlord 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 his absence.

## Issues before the Tribunal

6. The tenant is seeking the following:
  - a. Return of rent in the amount of \$1300.00;
  - b. 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 is Section 2 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

## Issue 1: Return of rent - \$1300.00

### Landlord Position

9. The tenant testified that she contacted the landlord on March 21, 2019 concerning the monthly rent for the property, [REDACTED]. The landlord was asking \$1500.00 but they agreed on \$1300.00 per month. The tenant went to view the unit on March 22, 2019 and agreed to rent the unit beginning April 1, 2019. When she went home she sent the \$1300.00 to the landlord through interac e-transfer. The tenant submitted a copy of the interac e-transfer in the amount of \$1300.00 (LL #1). The tenant said she felt pressured by the landlord to pay the rent as the landlord said there were other people going to look at the unit. The following day she contacted the landlord and told him she would not be renting the house and she wanted the \$1300.00 returned.
10. The tenant further testified that she was speaking with the landlord on April 4, 2019 and he agreed to refund the rent once he had the unit re-rented. She said the unit was re-rented for May 1, 2019. She has not received the \$1300.00.

### Analysis

11. I have reviewed the testimony and evidence of the tenant. I have determined that there is one issue that needs to be addressed; is the tenant entitled to the return of rent. The tenant agreed to rent the unit on March 22, 2019 for April 1, 2019 and she paid the rent in the amount of \$1300.00. The following day she told the landlord she could not rent the unit. I find that the tenant's evidence to be truthful in that the landlord told her on April 4, 2019 that he would return

the rent when he re-rented the unit. The unit was re-rented for May 1, 2019. Further, the landlord was not present to dispute the tenant's claim. Therefore, the landlord shall return the rent in the amount of \$1300.00.

### **Decision**

12. The tenant's claim for return of rent succeeds in the amount of \$1300.00.

### **Issue 2: Hearing Expenses - \$25.61**

13. 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

14. The tenant paid an application filing fee in the amount of \$20.00 and \$5.61 to scan evidence at Staples. The tenant is seeking these costs. The tenant submitted copies of the receipts from Staples (LL #5).

### **Analysis**

15. The cost the tenant incurred to make the application and to have the documents scanned are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the tenant's claim was successful, the landlord is responsible to cover the cost of the hearing expenses in the amount of \$25.61.

### **Decision**

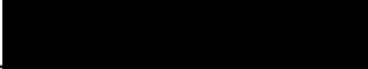
16. The landlord shall pay the tenant's hearing expenses in the amount of \$25.61.

**Summary of Decision**

17. The tenant is entitled to the following:

- a) Refund of rent .....\$1300.00
- b) Hearing expenses..... \$25.61
- c) **Total owing to Tenant** .....**\$1325.61**

October 1, 2019  
Date

  
Residential Tenancies Section