

Residential Tenancies Tribunal

Decision 19-0470-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 22 October 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 respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, 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 \$6500.00;
 - b. An order for a payment of late fees in the amount of \$75.00;
 - c. Authorization to retain the security deposit of \$650.00; and
 - d. A determination of the validity of a termination notice.

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 section 15 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them 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 she has been properly served. The landlord testified that he had served the tenants with notice of the hearing, by e-mail, on 29 August 2019 and they have had 53 days to provide a response. The landlord also submitted a copy of that e-mail at the hearing and he pointed out that the tenants' e-mail addresses were provided to him in the lease. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Rent - \$6500.00

Issue 2: Validity of Notice

Relevant Submissions

7. The landlord stated that he had entered into 1-year, fixed-term rental agreement with the tenants commencing 01 May 2018 and a copy of the executed lease was submitted at the hearing (█ #1). The agreed rent was set at \$1300.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$650.00.
8. The landlord stated that the tenants failed to pay rent to him for December 2018 and some days later he went to the rental unit to inquire about that rent. He testified that he found the unit abandoned and the only thing left at the apartment was some garbage.
9. The landlord stated that after he had the unit cleaned up, he began advertising it on Kijiji for rent and copies of these advertisements were submitted at the hearing (█ #4, #5). He stated that he would repost the advertisement every week.
10. Despite his attempts to re-rent the property, the landlord claimed that he was unable to secure new tenants until 01 June 2019 and the unit sat vacant from December 2018 to that date.
11. The landlord argued that as the tenants had signed a lease which was not set to expire until 30 April 2019 and as they had abandoned the unit without giving him any notice, he is entitled to rent for the period from 01 December 2018 to the end of the lease, a period of 5 months. The landlord is seeking an order for a payment of \$6500.00 for that period.

Analysis

12. I accept the landlord's claim that the tenants had moved out of the rental unit sometime in December 2018 without giving him any notice. According to the

Residential Tenancies Act, 2018, where tenants vacate rented premises without first terminating their agreement in accordance with that *Act*, they are considered to have abandoned the rented premises.

13. Where tenants abandon rented premises, they are liable for any damages caused by that abandonment, including any loss of rental income suffered by the landlord. The landlord does have a legal obligation, however, to mitigate those losses.
14. The landlord's evidence shows that he had taken all reasonable steps to secure new tenants and I accept his claim that despite his efforts, the unit sat vacant for the 5 months that were remaining in the lease.
15. As such, the landlord's claim for rent for the period from 01 December 2018 to 30 April 2019 succeeds.

Decision

16. The tenants did not issue the landlord a valid termination notice and the tenancy was not terminated in accordance with the *Residential Tenancies Act, 2018*.
17. The landlord's claim for a payment of rent succeeds in the amount of \$6500.00.

Issue 3: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

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. The minister has prescribed the following fees:

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 tenants have been in arrears since 02 December 2018, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

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

Issue 4: Security Deposit

23. The landlord stated that the tenants had paid a security deposit of \$650.00 on 17 April 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

24. As the landlord's claim has been successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

25. The landlord is entitled to the following:

a) Rent Owing	\$6500.00
b) Late Fees	\$75.00
c) Hearing Expenses	\$20.00
d) LESS: Security Deposit.....	(\$650.00)
e) Total Owing to Landlord	<u>\$5945.00</u>

01 April 2020

Date


John R. Cook
Residential Tenancies Tribunal