

Residential Tenancies Tribunal

Decision 19-0514-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 p.m. on October 2, 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.
3. The respondent, [REDACTED], hereafter referred to as tenant1, participated in the hearing. She was represented by [REDACTED]. The respondent, [REDACTED], hereafter referred to as tenant2 did not attend the hearing.

Preliminary Matters

4. Tenant2 was not present or represented at the hearing. Prior to the hearing I called and spoke with tenant2 and he said he would not be attending the hearing. 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 landlord shows that the application was sent electronically to the tenants on August 5, 2019 and the tenants have had 57 days to provide a response. The landlord submitted a copy of the e-mail dated August 5, 2019 as well as a copy of an e-mail the landlord sent to the tenants back in April 2019. 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 his absence.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$3000.00;
 - b. Late fees in the amount of \$75.00;
 - c. Hearing expenses.
7. Tenant1 is seeking the following:
 - a. Return of the security deposit in the amount of \$560.00.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2000 (the Act), Section 41.
9. Also relevant and considered in this case are Sections 12, 13, 18, 22 and 31 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 - \$3000.00

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

Landlord Position

11. The landlord testified that the tenants moved into the unit on June 1, 2018 for a one year term with rent set at \$750.00 per month due on the 1st of each month. On October 16, 2018 tenant1 served a termination notice under section 22 (interference with peaceful enjoyment) of the Act with an effective date of October 30, 2018. He replied to the termination notice with a letter dated October 18, 2018. The letter stated he is rejecting the termination notice because of unsubstantiated reasons. He testified that before tenant1 gave the termination notice he was after them to clean up the unit. He was afraid it was a fire and a mold and mildew hazard as there was a lot of clutter in the unit.
12. The landlord testified that he started advertising the unit for rent in early November on Kijiji and NL Classifieds. He had a few viewings but the unit was not re-rented until April 1, 2019. He is seeking rent for the months of November 2018 – February 2019.
13. After tenant1 gave her testimony the landlord testified that in 1998 he started to pay property taxes to the City of St. John's as a 2 unit house. He doesn't remember if an inspection was carried out on the house at that time. He said that in order to convert the house from a 1 unit to a 2 unit the City must have inspected the unit. He testified that when he received the letter from the City of St. John's in October 2018 he had a couple of minor changes to make and on February 24, 2019 he was issued an occupancy permit.
14. The landlord submitted into evidence a copy of a lease agreement (LL #1). The lease agreement is between the landlord and both tenants and it is signed by tenant1. The landlord's home address is different than the address of the rental unit. Also submitted into evidence was a copy of the letter dated October 18, 2018 (LL #2), copies of orders from Kijiji which show that the ad is bumped up. The dates of the orders are November 17 and 29, 2018, January 6, 17 and 27, 2019. All of the orders state the same order number. One order states the address of the rental unit.

Tenant Position

15. Tenant1 testified that she gave a termination notice under peaceful enjoyment. The notice was posted on the door of the rental unit because the landlord did not provide his address. The notice was given because multiple times the landlord made an appointment to visit the unit and he would not show up. It got to the point that they felt they were being harassed by the landlord. Also when the new tenants moved in upstairs tenant1 no longer felt safe being in the unit by herself because of the yelling and screaming from the upstairs unit. This was never brought to the landlord's attention. Another reason the notice

was given was that the landlord kept saying that tenant2 was not part of the agreement. She said they signed many copies of the lease agreement. Tenant1 actually signed the lease before tenant2. She further testified that when she gave the notice on October 16, 2018 she contacted the City of St. John's concerning the unit. An inspection was carried out on October 24, 2018. The inspector told her that the landlord did not have the legal right to rent the unit because there was no occupancy permit for the unit. The inspector did not shut down the unit.

16. The representative testified that the landlord did not have an occupancy permit for the unit as stated in the Affidavit from [REDACTED], Manager of Regulatory Services with the City of St. John's. Under the City of St. John's Act, By-Law No. 38 states *No building erected, constructed, changed, altered, extended or repaired shall be occupied in whole or in part until an Occupancy Certificate has been issued by the inspector.* The landlord did not have the legal right to rent the unit to the tenants. It voids the contract from the start of the tenancy. It would be a material breach of the lease agreement. The representative submitted into evidence a copy of the Affidavit from [REDACTED] and a copy of the file pertaining (T #3) to the rental unit [REDACTED]. In the file there is a memo dated December 19, 2018 from [REDACTED], the inspector who inspected the unit to [REDACTED], Archivist asking her to do a history check on the dwelling. He needs to verify when it was taxed as a 2 unit. [REDACTED] responded on December 21, 2018 stating it was changed to 2 units in 1998.
17. The tenant submitted into evidence a copy of a lease (T #1) signed by tenant2 dated May 22, 2018. The lease does not name anyone as tenants. A copy of the termination notice (T #2) dated October 16, 2018, and a copy of the City of St. John's By-Laws (T #4) were also submitted into evidence.

Analysis

18. I have reviewed the testimony and evidence of the landlord and tenant1 and the representative. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the termination notice dated October 16, 2018 was not properly served on the landlord. The tenant posted a copy on the door of the rental unit because the landlord did not provide an address for service. After reviewing the lease agreement (LL #1), the landlord did provide an address for service. Also the tenant did not provide any evidence to substantiate how the landlord was interfering with their peaceful enjoyment. As the termination notice was not served properly and tenant1 failed to establish how the landlord was interfering with their peaceful enjoyment, the termination notice is not a valid notice. Further, the evidence the tenant presented regarding the landlord not having an occupancy permit is not relevant as the

termination notice was given under section 22 (interference with peaceful enjoyment).

19. As the termination notice was not a proper notice the tenants have abandoned the unit as per section 31.(2)(b). When a tenant abandoned a unit the landlord is required to mitigate his losses as required by section 10.(1)(4). Based on the orders for the ads on Kijiji, I find the landlord tried to mitigate his losses as the ads were bumped up in November 2018 and January 2019. The claim for the payment of rent succeeds for the period November 2018 – February 2019 in the amount of \$3000.00 (\$750.00 x 4 months = \$3000.00).

Decision

20. The landlord’s claim for rent succeeds as per the following:

a. Rent owing for November 2018.....	\$750.00
b. Rent owing for December 2018.....	\$750.00
c. Rent owing for January 2019	\$750.00
d. Rent owing for February 2019.....	<u>\$750.00</u>
e. Total rent owing.....	\$3000.00

Issue 2: Payment of utilities - \$170.27

Landlord Position

21. The landlord testified that the tenants were responsible for half of the electrical bill. There was one electrical/power bill for the 2 units and the landlord kept the bill in his name. He would divide the amount between the upstairs and downstairs tenants and he would just tell them the amount. He testified that the tenants’ portion of the electrical/power bill for the month of October is \$170.27. The landlord did not provide a copy of the electrical/power bill at the hearing.

Tenant Position

22. The tenant testified that they did not use ½ of the amount of the electricity for the month of October. She acknowledges that she signed the lease which states they agreed to pay ½ of the electricity with the other tenants.

Analysis

23. I have reviewed the testimony and the evidence presented of the landlord and tenant1. I have determined that there is one issue that needs to be addressed; are the tenants responsible for the payment of the electrical/power bill. Based on the rental agreements presented by the landlord and tenant1, the tenants were responsible for ½ of the electrical/power bill. However, the landlord did not present a copy of the power bill to show the amount for the period in question. Since the landlord did not provide a copy of the electrical/power bill, the claim for payment of the electrical/power bill fails.

Decision

24. The landlord's claim for payment of the electrical/power bill is unsuccessful.

Issue 3: Late fees - \$75.00

Landlord Position

25. The landlord testified he is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since October 2018.

Analysis

26. The rental arrears has been established in paragraph 20 above. The *Residential Tenancies Regulations, 2000* 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 October 2018 the late fees have exceeded the maximum amount of \$75.00.

Decision

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

Issue 4: Application for Security Deposit

28. Under the authority of Section 41.(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.

Tenant Position

29. Tenant1 testified that a \$560.00 security deposit was paid.

Landlord Position

30. The landlord acknowledges a \$560.00 security deposit was paid on/or about June 1, 2018.

Analysis

31. A \$560.00 security deposit was paid in June 2018. The landlord shall retain the \$560.00 security deposit as he has been successful in his claim for the payment of rent and late fees.

Decision

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

Issue 4: Hearing Expenses - \$20.00

33. 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

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

Analysis

35. The cost 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*. As the landlord's claim was successful, the tenants are responsible to pay the landlord's hearing expenses in the amount of \$20.00.

Decision


36. The tenants shall pay the landlord's hearing expenses in the amount of \$20.00.

Summary of Decision

37. The landlord is entitled to the following:

a) Payment of rent.....	\$3000.00
b) Late fees	\$75.00
c) Hearing expenses	<u>\$20.00</u>
d) LESS: Security deposit	<u>(560.00)</u>
e) Total owing to the Landlord	<u>\$2535.00</u>

March 3, 2020
Date


Residential Tenancies Section