

Residential Tenancies Tribunal

Decision 19-0524-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 p.m. on August 19, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED], hereafter referred to as the landlord, participated in the hearing by conference call. [REDACTED] did not attend the hearing but she was represented by [REDACTED].
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord discontinued the claim for vacant possession as the tenant vacated on July 5, 2019.
5. The tenant was not present or represented at 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.

6. The affidavit of service submitted by the landlord shows that the notice of this hearing was sent electronically to the tenant on August 5, 2019 and the tenant has had 13 days to provide a response. The landlord submitted a copy of the e-mail along with a copy of the rental agreement containing the tenant's e-mail address. 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

7. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$1900.00;
 - b. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 14 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 - \$1900.00

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 tenant signed a rental agreement on April 12, 2019 to begin on April 24, 2019 with rent set at \$1900.00 per month due on the 2nd of each month. No rent was charged for the last week of April 2019. Rent for the month of May 2019 was paid in cash on April 12, 2019. Since receiving the rent on April 12, 2019 he has not received any monies from the tenant. The landlord further testified that on June 17, 2019 he posted on the door of the unit a termination notice under section 19 of the Act to vacate on June 28, 2019. The tenant did not vacate until July 5, 2019. He is seeking rent for the month of June 2019.
12. The landlord presented a copy of the rental agreement (LL #1) and a copy of the termination notice (LL #2).

Analysis

13. I have reviewed the testimony and evidence of the landlord. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenant did not pay the rent for the month of June 2019. On June 17, 2019 the landlords served a termination notice to vacate on June 28, 2019 and the tenant vacated on July 5, 2019. The claim for payment of rent for the month of June 2019 succeeds in the amount of \$1900.00.

Decision

14. The landlords' claim for the payment of rent succeeds in the amount of \$1900.00.

Issue 2: Application for Security Deposit

15. 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

16. The landlord testified a \$1425.00 security deposit was paid on April 12, 2019.

Analysis

17. A \$1425.00 security deposit was paid in April 2019. As the landlords have been successful in their claim for the payment of rent, they shall retain the \$1425.00 security deposit.

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18. The landlords shall retain the \$1425.00 security deposit as outlined in this decision and attached order.

Issue 3: Hearing Expenses - \$20.00

19. 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

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

Analysis

21. 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.

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

Summary of Decision

23. The landlord is entitled to the following:

a) Payment of rent.....	\$1900.00
b) Hearing expenses	\$20.00
c) LESS: The security deposit	(1425.00)
d) Total owing to Landlord	<u>\$495.00</u>

November 18, 2019
Date


Residential Tenancies Section