

Residential Tenancies Tribunal

Decision 19-0535-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on November 12, 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 the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord amended the claim for the payment of rent from \$1700.00 to \$2200.00.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the tenant and spoke with him. He was unable to attend 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 for the hearing for August 21, 2019 was electronically served on the tenant on July 9, 2019. The hearing was postponed and rescheduled for November 12, 2019. The notice of the rescheduled hearing was sent electronically by Residential Tenancies on September 26, 2019. The tenant has had 46 days to provide a response. 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

7. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$2200.00;
 - 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 - \$2200.00

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 moved into the unit on June 15, 2018 on a month to month tenancy with rent set at \$800.00 per month due on the 15th of each month. The rent for June 2018 was paid on June 18, 2018 and the rent for July was paid on July 27, 2018. The rent was paid through interac e-transfer. Since receiving July's rent she has not received any other monies from the tenant. On October 15, 2018 she served the tenant with a termination notice under section 19 (failure to pay rent) to vacate in 10 days. The tenant had all of his belongings moved out by November 7, 2018. The landlord submitted a copy of the rent ledger (LL #1).

Analysis

12. I have reviewed the testimony and evidence of the landlord and I have determined that there is one issue that needs to be addressed; is rent owing. I find that the rent was paid for the months of June and July 2018. A termination notice was served on October 15, 2018 and the tenant vacated on November 7, 2018. Rent is owed in the amount of \$800.00 for each month for the months of August and September 2018. Rent due on October 15, 2018 can only be awarded up to the date the tenant vacated which is November 7, 2018. \$631.30 ($\$800.00 \times 12 \text{ months} = \$9600.00 \div 365 \text{ days} = \$26.30 \times 24 \text{ days} = \631.20) is owed for the period October 15 – November 7, 2018.

Decision

13. The landlord’s claim for rent succeeds as per the following:
- a. Rent owing for August 2018.....\$800.00
 - b. Rent owing for September 2018.....\$800.00
 - c. Rent owing for October 15 – November 7, 2018.....\$631.30
 - d. Total rent owing.....\$2231.20

Issue 2: Application for Security Deposit

14. 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

15. The landlord testified a \$400.00 security deposit was paid on June 23, 2018.

Analysis

16. A security deposit was paid in June 2018. As the landlord has been successful in the claim for the payment of rent, she shall retain the \$400.00 security deposit as outlined in this decision and order.

Decision

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

Issue 3: Hearing Expenses - \$20.00

18. 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

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

Analysis

20. 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 tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

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

Summary of Decision

22. The landlord is entitled to the following:

a) Payment of rent.....	\$2231.20
b) Hearing expenses	<u>\$20.00</u>
c) LESS: Security deposit	<u>(\$400.00)</u>
d) Total owing to Landlord	<u>\$1851.20</u>

February 10, 2020

Date


Residential Tenancies Section