

Residential Tenancies Tribunal

Decision 20-0628-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 10:55 a.m. on October 24, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], represented by [REDACTED], hereafter referred to as the landlord, attended the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, attended the hearing.

Preliminary Matter:

4. The tenant called [REDACTED], his wife, as a witness.
5. The tenant paid a security deposit in the amount of \$500.00 on September 27, 2018. The landlord returned the security deposit on April 10, 2019.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$2000.00;
 - b. Payment of late fees in the amount of \$75.00;
 - c. Payment of advertising costs in the amount of \$570.64.

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 are Sections 15, 19 and 20 of the Act.

Issue 1: Payment of rent - \$2000.00

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

Landlord Position

10. The landlord testified that the tenant moved into the unit the end of September 2018 with a one year term agreement to start on October 1, 2018. The rent was set at \$1000.00 per month due on the 1st of each month. On January 16, 2019 she received a text message from the tenant stating that they found a house and that they were going to be moving out on March 15, 2019. She wrote back and told him he is required to give a notice 2 months before the end of the term. She advised him to check with Residential Tenancies on the termination notice. The tenant contacted her and said he was in touch with the office and she was correct that he had to give a 2 month notice before the end of the term. The tenant on the advice from Residential Tenancies asked about signing a discontinuance agreement. On January 22, 2019 she told him that signing a discontinuance agreement was not an option. She would consider to sub-let or assignment.
11. The landlord testified that on January 25, 2019 she received a request for repairs from the tenant. Then on January 29, 2019 she received an inspection report from Service NL. On the recommendations of the report she went to the unit and she cleaned the areas of discoloration in the porch, bathroom, closet and the cupboards. She painted the porch. The ceiling above the shower in the bathroom was a normal discoloration. She said she didn't see mould. The report does not state mould in the unit. That same day she had someone repair the lock. Also on the report it recommended that the landlord investigate for water intrusions. She hired Breakwater Builders to examine the fan and they also removed pieces of siding to inspect for any water intrusion. They found no issues. She hired a roofing company to inspect the roof and eaves. No leaks were found. She had all of the issues addressed by January 31, 2019.
12. The landlord testified that she feels she followed up on the issues as she asked the tenant on February 8, 2019 if there were any issues with the fan and the tenant replied he thinks the problem is fixed. There were no other issues mentioned. She said none of these issues were brought to her attention before

January 16, 2019. They were brought to her attention after she would not sign a discontinuance form.

13. The landlord testified that on February 25, 2019 she received a termination notice under section 20 of the Act by e-mail that the tenant was vacating on March 31, 2019. When she received the termination notice she felt it was the tenant's final decision to terminate despite her addressing the issues. She started advertising right away by posting notices up at campus. Then on March 11, 2019 she started advertising on Kijiji. The unit was re-rented for June 1, 2019. Rent was paid up to the end of March 2019. The landlord submitted into evidence a copy of the rental agreement (LL #1), a copy of the history for the Kijiji ads (LL #2), a copy of the tenant's request for repairs (LL #3), a copy of the inspection report from Service NL (LL #4), and copies of e-mails and text messages between the landlord and tenant (LL #5).

Tenant Position

14. The tenant acknowledges that he signed a rental agreement for a one year period. Before they moved out of the unit they had bought a house. He testified that he requested repairs to the unit before January 25, 2019. Prior to moving in he asked the landlord could she install carpet. A month or two later the carpet was installed. He testified that around the end of October his wife moved into the unit. During the months of November and December they would contact the landlord verbally about issues and the landlord would make the repair.
15. The tenant testified that the landlord corrected all of the issues that were addressed on January 25, 2019 except for the distinct smell. She cleaned the mould but around February 8, 2019 they noticed that the mould was back. The landlord was aware the mould came back but she never came back to clean it. He said the door knob was still difficult to open and close when the temperature would drop. The tenant presented photographs of the ceiling taken on January 28, 2019 (T #2) and February 7 and 12, 2019 (T #3) and a photograph of the door (T #4).
16. The tenant testified that there was no correspondence from the landlord after he served the termination notice on February 25, 2019. The landlord started showing the unit on March 13, 2019.
17. ██████████, witness for the tenant, testified that shortly after she moved into the unit she brought issues to the landlord's attention. On January 29, 2019 the landlord cleaned the unit. On February 8, 2019 they noticed the mould again. It came back within 10 days. She testified that they decided in December 2018 to buy a house.

Analysis

18. I have reviewed the testimony and evidence of the landlord and tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenant signed a rental agreement for one year from October 1, 2018 to September 30, 2019. On January 25, 2019 the tenant gave a landlord a notice to make repairs by January 31, 2019. The tenant acknowledges the repairs were carried out except for the smell. The tenant did not present any evidence to indicate that he again notified the landlord that the smell was still in the unit. Based on the photographs presented, there was black on the ceiling on February 12, 2019. It is the tenant's obligation to notify the landlord that the problem was not rectified as they noticed black in the ceiling starting to appear and that the problem was not fixed.
19. The tenant served a termination notice on the landlord on February 25, 2019 to vacate the unit on March 31, 2019. I find the termination notice is not a valid notice as the landlord completed the repairs as requested by the tenant. Under section 31.(2)(b) a tenant is considered to have abandoned a residential premises when the rental agreement is not terminated in accordance with this Act or the rental agreement. Under section 10.(1)(4) the landlord is required to mitigate his/her losses if the tenant abandons the unit. I find the landlord mitigated her losses as she advertised the unit for rent starting March 11, 2019 on Kijiji and the unit was re-rented for June 1, 2019. The claim for payment of rent succeeds in the amount of \$1000.00 for each month for the months of April and May 2019 for a total of \$2000.00.

Decision

20. The landlord's' claim for rent succeeds as per the following:
- | | |
|------------------------------------|------------------|
| a. Rent owing for April 2019 | \$1000.00 |
| b. Rent owing for May 2019 | <u>\$1000.00</u> |
| c. Total rent owing..... | \$2000.00 |

Issue 2: Late fees - \$75.00

Landlord Position

21. The landlord testified she is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since April 2019.

Tenant Position

22. The tenant testified that he was never late paying the rent. He doesn't think he is obliged to pay anything.

Analysis

23. The rental arrears has been established in paragraph 20 above. The *Residential Tenancies Regulations, 2018* 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 April 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

24. The claim for late fees succeeds in the amount of \$75.00.

Issue 3: Payment of advertising cost - \$570.64

Landlord Position

25. The landlord testified that \$570.64 was incurred in trying to re-rent the unit. An ad was posted on Kijiji on March 11, 2019. She would have the ad bumped to the top page and sometimes as the top ad. The landlord submitted a copy of the history for the Kijiji ads (LL #2).

Tenant Position

26. The tenant had no comment.

Analysis

27. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the cost of advertising. I find that the landlord incurred costs to try and re-rent the unit. The amount the landlord is claiming is reasonable. As the tenant is responsible for the payment of rent as outlined in No. 20 above, the claim for advertising costs succeeds.

Decision

28. The landlord's claim for advertising costs succeeds in the amount of \$570.65.


Summary of Decision

29. The landlord is entitled to the following:

- a) Payment of rent.....\$2000.00
- b) Late fees\$75.00
- c) Payment of advertising costs\$570.64
- d) **Total owing to the Landlord****\$2645.64**

April 8, 2020

Date


Residential Tenancies Section