

## Residential Tenancies Tribunal

Decision 20-0656-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 11:05 a.m. on October 17, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, attended the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, attended the hearing.

### Issues before the Tribunal

4. The landlords are seeking the following:
  - a. Payment of rent in the amount of \$1650.00;
  - b. Hearing expenses.

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
6. Also relevant and considered in this case are Sections 14, 18 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 - \$1650.00**

7. In determining an application for the payment of rent, the landlords are required to establish the rental rate and the payment record.

### Landlord Position

8. The landlords testified that the tenant agreed to rent one room in the unit for a 1 year term with rent set at \$550.00 per month due on the 1<sup>st</sup> of each month. The tenancy began on September 1, 2018. Rent was paid for the period September 2018 – May 2019. Landlord1 testified that sometime between the middle and the 3<sup>rd</sup> week of May another tenant living in the unit notified her that the tenant's room was empty. When they didn't receive the rent for June 2019 she contacted the tenant and he said that he was moved out. The tenant never returned the keys. They advertised the room for rent on Kijiji, Instagram, NL Classified and Facebook available for September 1, 2019. They did not present copies of the ads.
9. After the tenant gave his testimony the landlords testified that they were staying at the unit in their son's room for about 6 weeks starting on June 8, 2019. They were there during the week days. The tenants living in the unit were given notice by their son that the landlords would be staying in his room as landlord2 was transferred to St. John's with his job. Landlord1 testified that she cleaned the tenant's room in July 2019.

### Tenant Position

10. The tenant testified that he moved out of the unit the end of May 2019 but he didn't give a termination notice. He was planning on paying the rent until another tenant in the unit sent him a message stating that the landlords were living in the house. He said that sometime in June he mentioned to his friend that his room was available for rent.

### Analysis

11. I have reviewed the testimony and evidence of the landlords and the tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenant rented a room in the unit for a 1 year term beginning September 1, 2018 and he moved out the end of May 2019 without giving a termination notice. The landlord cleaned out the tenant's room in July 2019. Under section 18.(2)(b) a tenant is required to give a termination notice not less than 2 months before the end of the term. The tenant did not terminate the tenancy as required by Section 18.(2)(b). Under section 31.(2)(b) a tenant is considered to have abandoned a unit when the rental agreement is not terminated in accordance with the Act or the rental agreement. When a tenant abandons a unit the landlord is required to mitigate his/her losses as per

section 10.(1) 4 of the Act. The landlords did not present any evidence to show that they tried to mitigate their losses. As the landlords failed to establish that they tried to re-rent the room in a timely fashion, the claim for payment of rent fails.

## **Decision**

12. The landlords' claim for rent fails:

## **Issue 2: Application for Security Deposit**

13. 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

14. The landlords testified that the tenants paid a \$200.00 security deposit on August 21, 2018.

## Tenant Position

15. The tenant testified that he paid a \$200.00 security deposit.

## **Analysis**

16. A \$200.00 security deposit was paid in August 2018. The landlords shall return the security deposit as they have been unsuccessful in their claim for the payment of rent. The interest rate on security deposits for the period 2018 – 2019 is 0%.

## **Decision**

17. The landlords shall return 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 landlords paid an application filing fee in the amount of \$20.00. The landlords are 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 landlords' claim has been unsuccessful, the claim for payment of hearing expenses fails.

**Decision**

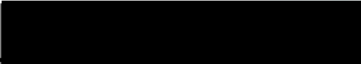
21. The landlords' claim for hearing expenses fails.

**Summary of Decision**

22. The tenant is entitled to the following:

a) Return of the security deposit.....\$200.00

April 8, 2020  
Date

  
Residential Tenancies Section