

Residential Tenancies Tribunal

Decision 20-0671-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on November 28, 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 respondents, [REDACTED] and [REDACTED], hereafter referred to as the tenants, did not attend the hearing.

Preliminary Matter:

4. The landlords amended the claim for payment of rent from \$2800.00 to \$2823.40.
5. The tenants were not present or represented at the hearing. Prior to the hearing, I called the tenants but I was unable to reach them. 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 landlords show that the notice of the hearing was electronically served on the tenants on October 9, 2019. The tenants have had 49 days to provide a response. The landlords submitted a copy of the facebook messenger and a copy of previous messages through facebook messenger with the tenants. As the tenants were 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 their absence.
7. The hearing was recalled at 3:15 p.m. on November 28, 2019 and landlord2 attended the hearing.

Issues before the Tribunal

8. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$2823.40.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 14 and 19 of the Act.

Issue 1: Payment of rent - \$2823.40

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

Landlord Position

12. The landlords testified that the tenants moved into the basement unit on October 1, 2018 at a rate of \$900.00 per month due on the 1st of each month. The rent was paid for October 2018 in two installments; \$200.00 was paid on October 19, 2018 and \$700.00 was paid on November 1, 2018. The tenants moved to the upstairs unit on November 12, 2018 at a rate of \$1200.00 per month but the rent for the month of November 2018 was \$900.00. They received \$200.00 towards November's rent. Since November 2018 the rent has been in arrears. Each month the tenants made a payment towards the rent. Some months the rent was paid in full. The last payment they received was on July 14, 2019 in the amount of \$600.00. The rent was paid through interac e-transfer. On August 1, 2019 they gave a termination notice to the tenants to vacate on August 11, 2019. The tenants vacated on August 12,

2019 and they are seeking \$473.40 for the period August 1 – 12, 2019. The following is a breakdown on the payments received:

November 20, 2018	\$200.00
December 1, 2018	\$350.00
January 3, 2019	\$665.00
January 12, 2019	\$400.00
January 15, 2019	\$135.00
February 23, 2019	\$1200.00
March 22, 2019	\$700.00
April 5, 2019	\$500.00
April 27, 2019	\$600.00
May 4, 2019	\$600.00
May 31, 2019	\$600.00
July 1, 2019	\$350.00
July 14, 2019	\$600.00

The amount owing is \$4073.40.

13. When the hearing was recalled landlord2 testified that they received 2 payments that were omitted in the e-transfer record. \$650.00 was paid on December 4, 2018 and \$400.00 was paid on June 3, 2019. She testified that they reduced the rent for December 2018 by \$200.00. The amount owing is \$2823.40. A copy of the e-transfer record (LL #1) and the amended e-transfer record (LL #5) were submitted into evidence.

Analysis

14. I have reviewed the testimony and evidence of the landlords. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenants moved into the unit in November 2018. Based on the e-transfer record the rent has been in arrears since the start of the tenancy and the amount of rent owing is \$2823.40

Decision

15. The landlords' claim for rent succeeds as per the following:
 - a. Rent owing for November 2018.....\$700.00
 - b. Rent owing for March 2019\$500.00
 - c. Rent owing for April 2019\$100.00
 - d. Rent owing for June 2019\$800.00
 - e. Rent owing for July 2019.....\$250.00
 - f. Rent owing for August 1 – 12, 2019\$473.40

g. Total rent owing..... \$2823.40

Issue 2: Application for Security Deposit

16. 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

17. The landlords testified that the tenants paid a \$350.00 security deposit on September 30, 2018 for the downstairs unit. When the tenants moved to the upstairs unit, the security deposit was transferred to that unit.

Analysis

18. A \$350.00 security deposit was paid in September 2018. The landlords shall retain the security deposit as they have been successful in their claim for the payment of rent. The interest rate on security deposits for the period 2018 – 2019 is 0%.

Decision

19. The landlords shall retain the security deposit as outlined in this decision and attached order.

Summary of Decision

20. The landlords are entitled to the following:

- a) Payment of rent..... \$2823.40
- b) **Less the security deposit**..... **(350.00)**
- c) **Total owing to the Landlords** **\$2473.40**

March 30, 2020
Date


Residential Tenancies Section