

Residential Tenancies Tribunal

Decision 19-0817-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 20 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$3875.00;
 - b. An order for a payment of late fees in the amount of \$75.00;
 - c. An order for a payment of \$100.00 in compensation for inconvenience; and
 - d. Authorization to retain the security deposit of \$768.75.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where a 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 has been properly served. The landlord submitted an affidavit with his application stating that the tenant was served with notice of the rescheduled hearing, by e-mail, on 04 February 2020. A copy of that e-mail was submitted by the landlord and he pointed out that that e-mail address was provided by the tenant in the lease agreement. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
7. The landlord amended his application at the hearing and he stated that he was no longer seeking compensation for inconvenience.

Issue 1: Rent - \$3875.00

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant commencing 01 June 2018 and a copy of the executed lease was submitted with his application (█ #1). The agreed rent was set at \$1095.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$768.75.
9. In 2019 the tenant fell into rental arrears and the landlord issued the tenant a termination notice on 15 August 2019. A copy of that notice was submitted with the landlord's application (█ #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 27 August 2019.
10. The landlord stated that after the notice was issued, the tenant asked for an extension of the termination date and that landlord stated that he agreed to work with the tenant. He received some partial rent payments from the tenant in September 2019 but the arrears had nevertheless increased. Instead of issuing another termination notice, the landlord and tenant agreed that the tenancy would end on 15 October 2019 and the tenant moved on that date.
11. The landlord submitted rent records with his application (█ #3) showing the payments he had received from the tenant since he moved in. According to these records, the landlord was charging \$1025.00 for rent each month, and not \$1095.00 as stated in the lease.

12. According to these records, the tenant last had a zero balance on 28 June 2019. Since that date, the tenant has only made 4 rent payments to the landlord, totalling \$1250.00.
13. The landlord stated that although it was agreed that the tenancy would end on 15 October 2019, he claimed that between 07 October 2019, when he first started advertising the unit, and 15 October 2019, when the tenant vacated, the tenant would not allow him access to the property. Accordingly, the landlord argued that he is entitled to rent for the period ending 30 November 2019.
14. The landlord calculates that the tenant owes him \$3875.00.

Analysis

15. I accept the landlord's claim that the tenant has not paid rent as required. As there was an agreement that the tenancy would end on 15 October 2019, I find that the landlord is entitled to rent up to that date.
16. I calculate that amount to be \$2337.50 (\$1025.00 for each of July, August and September 2019, \$512.50 for October 2019, less the 4 payments totalling \$1250.00).

Decision

17. The landlord's claim for a payment of rent succeeds in the amount of \$2337.50.

Issue 2: Late fees - \$75.00

Relevant Submissions

18. The landlord has assessed late fees in the amount of \$75.00.

Analysis

19. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

20. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

Decision

21. As the tenant has been in arrears since 02 July 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Hearing Expenses

22. The landlord paid \$20.00 to file this application. As the landlords' claim has been successful, the tenant shall pay this hearing expense.

Issue 4: Security Deposit

23. The landlord stated that the tenant had paid a security deposit of \$768.75 on 11 May 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and order.


Summary of Decision

24. The landlord is entitled to the following:

- a) Rent Owing\$2337.50
- b) Late Fees\$75.00
- c) Hearing Expenses.....\$20.00
- d) **LESS: Security Deposit..... (\$768.75)**
- e) Total Owing to Landlord\$1663.75

27 May 2020

Date


John R. Cook
Residential Tenancies Tribunal