

Residential Tenancies Tribunal

Decision 19-0865-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on December 2, 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 discontinued the claim for vacant possession as the tenant vacated on/or about November 26, 2019. The landlord amended the claim for the payment of rent from \$2300.00 to \$2450.00 up to November 30, 2019.
5. The landlord amended the application to include the payment of the oil bill in the amount of \$782.59 and \$95.45 for the service on the furnace. When the landlord served the application on the tenant this amount was attached to the application.
6. The tenant was not present or represented at 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.

7. The affidavit of service submitted by the landlord shows that the notice of the hearing was electronically served on the tenant on November 19, 2019. The tenant has had 12 days to provide a response. The landlord submitted a copy of the text message sent on November 19, 2019 along with copies of previous text messages between himself and the tenant. 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

8. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$2450.00;
 - b. Late fees in the amount of \$75.00;
 - c. Payment of utilities in the amount of \$878.04;
 - d. Hearing expenses.

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, 15 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 - \$2450.00

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 landlord testified that the tenant moved into the unit the last week of August 2019. The tenancy was to begin on September 1, 2019 on a month to month bases with rent set at \$1150.00 per month. The tenant paid \$1000.00 through interac e-transfer for September. The tenant was to repair a hole in the wall to cover the remaining \$150.00. The tenant made an attempt to make the repair but the repair was not finished. Instead the tenant added 3 more holes to the wall. Since the tenant paid the rent for September 2019 he has not received any monies from the tenant towards the rent. On October 24, 2019 he posted a termination notice on the door for the tenant to vacate because the tenant had not paid the rent for October 2019. The tenant vacated on/or about November 26, 2019. The landlord submitted a photograph of the wall at the start of the tenancy and a photograph at the end of the tenancy (LL #3).

Analysis

13. 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 landlord received \$1000.00 towards September’s rent and the tenant agreed to do work for the remaining \$150.00. The work was not carried out. I also find that the landlord did not receive any rent for October and November 2019. The landlord gave a termination notice on October 24, 2019 and the tenant vacated on/or about November 26, 2019. The amount of rent owing is \$150.00 for September 2019; \$1150.00 for October 2019 and \$938.06 ($\$1150.00 \times 12 \text{ months} = \$13,800.00 \div 365 \text{ days} = \$37.81 \text{ per day} \times 26 \text{ days} = \938.06) for the period November 1 – 26, 2019, the date he vacated. The total owing is \$2283.06 ($\$150.00 + \$1150.00 + \$938.06 = \2283.06).

Decision

- 14. The landlord’s claim for rent succeeds as per the following:
 - a. Rent owing for September 2019.....\$150.00
 - b. Rent owing for October 2019\$1150.00
 - c. Rent owing for November 1 – 26, 2019\$938.06
 - d. Total rent owing\$2283.06

Issue 2: Late fees - \$75.00

Landlord Position

15. The landlord testified he is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since September 2019.

Analysis

16. The rental arrears has been established in paragraph 14 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 January 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

17. The landlord’s claim for late fees succeeds in the amount of \$75.00.

Issue 3: Payment of oil bill service charges - \$878.04

18. The landlord testified that when the tenant went to move in the oil tank was bone dry. He had an agreement with the tenant that he would fill the tank up

and the tenant would be responsible to have the oil tank full when he vacates the unit. The landlord had the oil tank filled at a cost of \$782.59 and he had to pay a service fee of \$95.45 to have the furnace bled. When the tenant vacated the oil tank was empty and the furnace had to be bled. The landlord submitted copies of 2 statements from Ultramar (LL #2). The statement dated August 27, 2019 shows the amount of oil purchased and the statement dated September 27, 2019 shows the cost of the service.

Analysis

19. I have reviewed the testimony and evidence of the landlord. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the cost of the oil and the service charge. Based on the statements from Ultramar the landlord had \$782.59 worth of oil put into the tank at the start of the tenancy and he incurred a cost of \$95.45 to have the furnace bleed. I accept the testimony of the landlord that the oil tank was empty when the tenancy ended and he had to incur cost to have the furnace bled. The claim for the payment of oil and the service charge succeeds in the amount of \$878.04 ($\$782.59 + \$95.45 = \878.04) and I

Application for Security Deposit

20. 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

21. The landlord testified a \$575.00 security deposit was paid in August 2019.

Analysis

22. A security deposit was paid in August 2019. As the landlord has been successful in his claim for the payment of rent, late fees and utilities, he shall retain the \$575.00 security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$20.00

24. 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

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

Analysis

26. 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 pay the landlord's hearing expenses in the amount of \$20.00.

Decision


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

Summary of Decision

28. The landlord is entitled to the following:

a) Payment of rent.....	\$2283.06
b) Late fees	\$75.00
c) Payment of utilities and service charge	\$878.04
d) Hearing expenses	<u>\$20.00</u>
e) LESS: Security deposit	(575.00)
f) Total owing to the Landlord	<u>\$2681.10</u>

April 3, 2020
Date


Residential Tenancies Section