

Residential Tenancies Tribunal

Decision 19-0874-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 p.m. on February 5, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The originating applicants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.
3. The countering applicant, [REDACTED] represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing by a conference call.

Issues before the Tribunal

4. The tenants are seeking the following:
 - a. Refund of the security deposit in the amount of \$820.00;
 - b. Hearing expenses.
5. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$1095.00;
 - b. Payment of late fee in the amount of \$75.00;
 - c. Hearing expenses.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case are Sections 10, 14, 15, 19 and 21 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 - \$1095.00

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

Landlord Position

9. The landlord testified that the tenants agreed on October 28, 2019 to rent the unit on a month to month tenancy with rent set at \$1095.00 per month beginning November 1, 2019. They asked if they could move in before November 1, 2019 as they were staying at a hotel. On October 30, 2019 the representative from the company met with the tenants at the unit. They did a walk through. While doing the walk through the tenants discovered mildew on the ceiling in the bathroom and on the wall behind the fridge. That evening the tenants served a termination notice under section 21 (uninhabitable) of the Act to vacate that day.
10. The landlord testified that they disagreed with the notice as the tenants did not give them an opportunity to carry out the repairs nor did the tenants give a formal request for repairs. The repairs were carried out the next day. After the tenants gave their testimony the landlord said it was not mold on the ceiling or the wall it was mildew. Also behind the fridge there was a piece of rotten trim.
11. The landlord testified that they advertised the unit for rent on Kijiji, zulu and the rent board. As of the date of the hearing the unit has not been re-rented.

Tenant Position

12. Tenant1 testified that they viewed the unit on October 28, 2019 with [REDACTED], a representative from the company. When they viewed the unit, the unit was not cleaned, there was a smell of smoke and the blinds were yellow. The representative agreed that the unit would be cleaned, the blinds would be removed and they would put an ionizer in the unit to remove the smell of smoke.

At that time they agreed to rent the unit for November 1, 2019 and they paid the security deposit.

13. Tenant1 testified that when they went back on October 30, 2019 the smell of smoke was still there and the unit was not cleaned. They did another walk through. They discovered mold on the ceiling in the bathroom and when they pulled out the fridge, they discovered that there was mold on the wall. They decided not to take the unit.
14. Tenant2 testified that he went to the office on October 30, 2019 and served the landlord with a termination notice to vacate immediately.

Analysis

15. I have reviewed the testimony and the evidence of the landlord and the tenants. I have determined that there is one issue that needs to be addressed; are the tenants responsible for the payment of rent for the month of November 2019. I find that on October 28, 2019 the tenants agreed to rent the unit for November 1, 2019. On October 30, 2019 when they did a walk through they discovered black on the ceiling in the bathroom and black on the wall and floor behind the fridge. They gave a termination notice to the landlord on October 30, 2019 under section 21 (uninhabitable) that they would be vacating that day. In considering a termination for premises uninhabitable under Section 21, a tenant must provide documentation from an authoritative body such as a city building inspection. In addition if the unit is declared uninhabitable by a regulatory authority then a termination notice under this section can be issued. As the tenants did not provide any declaration from a regulatory authority and the tenants are not an authority on the habitability of property, the termination notice under this section is not valid.
16. Even though the termination notice is not valid, the landlord did not present any evidence to establish that he tried to mitigate his losses. Under section 10.(1)(4) the landlord is required to mitigate his/her losses when a tenancy is not terminated in accordance with this Act. As the landlord did not present any evidence to show they mitigated their losses, the claim for payment of rent fails.

Decision

17. The landlord's claim for the payment of rent fails.

Issue 2: Late fees - \$75.00

Landlord Position

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

Analysis

19. 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 landlord's claim for payment of rent has been unsuccessful, the claim for payment of late fees fails.

Decision

20. The landlord's claim for late fees succeeds fails.

Issue 3: Application for Security Deposit

21. 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.

Tenant Position

22. The tenants testified that they paid an \$820.00 security deposit on October 28, 2019.

Landlord Position

23. The landlord acknowledges that the tenants paid an \$820.00 security deposit.

Analysis

24. An \$820.00 security deposit was paid. The landlord shall return the security deposit as the landlord's claim for payment of rent and late fees has been unsuccessful. The interest rate on security deposits for 2019 is 0%.

Decision

25. The security deposit shall be disposed of as outlined in this decision and attached order.

Issue 4: Hearing Expenses

26. 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

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

Analysis

28. The cost the landlord incurred to make the application is considered a reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the landlord’s claim for payment of rent and late fees has been unsuccessful, the landlord’s claim for hearing expenses fails.

Decision


29. The landlord’s claim for hearing expenses fails.

Summary of Decision

30. The tenants are entitled to the following:

- a. Return of the security deposit\$820.00

May 19, 2020
Date


Residential Tenancies Section