

Residential Tenancies Tribunal

Decision 19-0893-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 p.m. on January 9, 2020 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. The applicant, [REDACTED], did not attend the hearing but he was represented by [REDACTED].
3. The respondents, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, did not attend the hearing.

Preliminary Matter:

4. The landlord amended the claim for payment of rent from \$2400.00 to \$12,000.00. This is to cover rent up to the end of the lease, November 2019 to August 31, 2020.
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 affidavits of service submitted by the landlord show that the notice of the hearing was electronically served on the tenants on December 26, 2019. The landlord submitted a copy of the e-mail dated December 26, 2019 along with a copy of the lease agreement (LL #1). The lease agreement contains tenant1's e-mail address. The e-mail address for tenant2 on the lease agreement has a typo. Tenant2 sent an e-mail on November 6, 2019. The e-mail contains his e-mail address. The tenants have had 13 days to provide a response. 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.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$12,000.00;
 - b. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. 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 - \$12,000.00

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

Landlord Position

11. The landlord testified that the tenants moved into the unit on September 1, 2019 for a one year term with rent set at \$1200.00 per month due on the 1st of each month. The rent was paid for September and October 2019 through interac e-transfer. Shortly after the tenants moved in they were talking about moving out. On or about October 1, 2019 they received a text message from the tenants informing them that they were vacating at the end of October 2019. The tenants vacated on October 27, 2019. She testified that before they received the e-mail they started advertising the unit for rent on NL Classifieds, Kijiji and facebook marketplace. The unit is not re-rented as of the day of the hearing but they have showed the unit about 10 times to perspective tenants. The last showing was on January 7, 2020.

12. The landlord presented into evidence a copy of the rental agreement (LL # 1), copies of the interac e-transfer (LL #2), a copy of the rent ledger (LL #3) and copies of the ads and responses to the ads between the period September 25, 2019 and December 10, 2019 (LL #4).

Analysis

13. I have reviewed the testimony and evidence of the landlord. 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 on September 1, 2019 for a one year term and vacated on October 27, 2019. The rent was paid for September and October 2019. I also find that the tenants mentioned to the landlords that they were moving out before they gave the notice on October 1, 2019. The landlords started advertising around the end of September 2019 as the landlord presented copies of some of the ads and responses to the ads. When a term agreement is signed the tenants are required to give a notice not lease than 2 months before the end of the term as required by section 18.(1)(c). Under section 31.(2)

31.(2) a tenant is considered to have abandoned a residential premises where

- (a) the tenant has vacated the residential premises;*
- (b) the rental agreement is not terminated in accordance with this Act or the rental agreement;*

When a tenant is considered to have abandoned the unit the landlord is required under section 10.(1) (4) to mitigate his losses. As the tenants did not end the tenancy as required by section 18.(1)(c) and the landlords mitigated their losses as required by section 10.(1)(4), the claim for payment of rent succeeds up to the date of the hearing. The amount owing is \$1200.00 for November 2019; \$1200.00 for December 2019 and \$344.25 ($\$1200.00 \times 12 \text{ months} = \$14,400.00 \div 366 \text{ days} = \$38.25 \text{ per day} \times 9 \text{ days} = \344.25) for the period January 1 – 9, 2020 for a total of \$2744.25 ($\$1200.00 + \$1200.00 + \$344.25 = \2744.25).

Decision

14. The landlord’s claim for rent succeeds in the amount of \$2088.00.

a) Rent owing for November 2019.....	\$1200.00
b) Rent owing for December 2019.....	\$1200.00
c) Rent owing for January 1 – 9, 2020	\$344.25
d) Total owing to the Landlord	<u>\$2744.25</u>

Issue 2: Application for Security Deposit

15. 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

16. The landlord testified that the tenants paid a \$900.00 security deposit on August 13, 2019.

Analysis

17. An \$900.00 security deposit was paid in August 2019. The landlord shall retain the security deposit as they have been successful in the claim for the payment of rent. The interest rate on security deposits for 2019 is 0%.

Decision

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

Issue 3: Hearing Expenses - \$20.00

19. 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

20. The landlords paid an application filing fee in the amount of \$20.00 and \$50.73 to have the affidavits witnessed. The landlords are seeking these costs.

Analysis

21. The costs the landlords incurred to make the application and to have the affidavits witnessed are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the landlords' claim was successful, the tenants are responsible to pay the landlords' hearing expenses in the amount of \$70.53.

Decision


22. The tenants shall pay the landlords' hearing expenses in the amount of \$70.53.

Summary of Decision

23. The landlords are entitled to the following:

- a) Payment of rent.....\$2744.25
- b) Hearing expenses.....\$70.53
- c) **Less the security deposit****(900.00)**
- d) **Total owing to the Landlord****\$1914.78**

April 16, 2020
Date


Residential Tenancies Section