

Residential Tenancies Tribunal

Decision 19-0959-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:30 p.m. on January 28, 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 by a conference call.
3. The respondent, [REDACTED] hereafter referred to as the tenant, participated in the hearing by a conference call. The respondent, [REDACTED], hereafter referred to as tenant1, did not attend the hearing but he was represented by [REDACTED].

Preliminary Matter:

4. Under "other" on the application it read \$677.60. \$600.00 of this amount should have been included in the claim for payment of rent and the remainder \$77.60 should have been included in the claim for damages.

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$5280.65;
 - b. Payment of late fees in the amount of \$75.00;
 - c. Compensation for damages in the amount of \$277.60;
 - d. 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, 18, 19 and 31 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 - \$5280.65

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 moved into the unit on March 31, 2019 for a one year term with rent set at \$1600.00 per month due on the 1st of each month. He received the full amount of rent for the months of April – June 2019 and \$800.00 towards July's rent. On July 6, 2019 he received an e-mail from the tenant informing him that she was moving out the end of July 31, 2019. On July 31, 2019 he called tenant1. When he called tenant1, tenant1 and the tenant were on their way to [REDACTED]. The next day he advertised the unit for rent on Kijiji. He received his first response to the ad on August 6, 2019. The unit was not re-rented until October 13, 2019 at a reduced rate. He re-rented the unit for \$1500.00. The landlord said he is seeking \$800.00 for July 2019; \$1600.00 for each month for the months of August and September 2019; \$680.00 for the period of October 1 – 13, 2019; and \$100.00 for each month for the period October 2019 – March 2019 as he had to reduce the rent by \$100.00.
10. The landlord submitted into evidence a copy of the rental agreement dated March 30, 2019 (LL #1), a copy of the rent ledger (LL #2), a copy of the rental agreement with the new tenant for the tenancy to begin on October 13, 2019 (LL #4), and a copy of the response to the ad dated August 6, 2019 (LL #5). The rental agreement to begin on October 13, 2019 shows that the monthly rent was \$1500.00 per month.

Tenant Position

11. The tenant acknowledges that they signed a rental agreement for a one year term and she sent an e-mail to the landlord on July 6, 2019 that they were moving out the end of July 2019. They paid \$800.00 towards July's rent and they moved out July 31, 2019 because they did not have any money to pay for the rent.

Analysis

12. I have reviewed the testimony and evidence of the landlord and the tenant. 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 March 31, 2019 for a one year term. On July 6, 2019 the tenant sent an e-mail to the landlord informing him they were moving out on July 31, 2019 and they moved out on that date. The tenant acknowledges they paid \$800.00 towards July's rent. As the tenant acknowledges \$800.00 was owed for July 2019, the claim for rent for the month of July 2019 succeeds in the amount of \$800.00.
13. I also find that the tenants did not give a termination notice. Under section 18.(1)(c) a tenant is required to give a notice not less than 2 months before the end of a tenancy if they want to move out when the term is up. The tenants did not terminate the tenancy as required by the Act. Under section 31.(2) a tenant is considered to have abandoned the unit if the rental agreement is not terminated in accordance with this Act or the rental agreement. Under section 10.(1)(4) the landlord is required to mitigate his/her losses when a tenant is considered to have abandoned the unit. As the tenants were considered to have abandoned the unit, the landlord tried to mitigate his losses in a timely manner as he submitted a copy of a response to his ad dated August 6, 2019. The unit was not re-rented until October 13, 2019 as the landlord submitted a copy of the rental agreement for his new tenants to start on October 13, 2019 at a reduced rate. As the landlord mitigated his losses, the claim for the payment of rent for the period August 1, 2019 – October 12, 2019 succeeds in the amount of \$3831.20 (\$1600.00 for August 2019 + \$1600.00 for September 2019 + \$631.20 { $\$1600.00 \times 12 \text{ months} = \$19,200.00 \div 365 \text{ days} = \$52.60 \text{ per day} \times 13 \text{ days} = \631.20 } for October 1 – 12, 2019 = \$3883.80).
14. With regard to the claim for \$100.00 for each month until the end of the term. In order for the landlord to re-rent the unit he had to reduce the monthly rent by \$100.00. As the tenants signed a term agreement until the end of March 2020 and the landlord had to reduce the rent by \$100.00 for the next tenancy, the claim for \$100.00 for each month succeeds except for October 2019. The landlord was awarded $\frac{1}{2}$ of the rent for October 2019 so the tenants would be responsible for \$50.00 for the remainder of October 2019. The landlord's claim for rent for October 2019 – March 2020 succeeds in the amount of \$550.00 (\$50.00 for October 2019 and \$100.00 for each month for the months of November 2019 – March 2020).

Decision

15. The landlord's claim for rent succeeds in the amount of \$5181.20.

a) Rent owing for July 2019.....	\$800.00
b) Rent owing for August 2019.....	\$1600.00
c) Rent owing for September 2019.....	\$1600.00
d) Rent owing for October 1 – 13, 2019	\$631.20
e) Rent owing for October 14 – 31, 2019	\$50.00
f) Rent owing for November 2019.....	\$100.00
g) Rent owing for December 2019.....	\$100.00
h) Rent owing for January 2020	\$100.00
i) Rent owing for February 2020.....	\$100.00
j) Rent owing for March 2020	\$100.00
k) Total owing to the Landlord	<u>\$5181.20</u>

Issue 2: Late fees - \$75.00

Landlord Position

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

Analysis

17. The rental arrears has been established in paragraph 15 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 July 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

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

Issue 3: Compensation for damages - \$277.60

19. The landlord testified that when the tenants vacated he spent 4 hours cleaning the unit. He had to clean the oven, stovetop, cupboards, dust, wash the hardwood floors, and vacuum the carpet. He is claiming \$19.40 per hour for the work.

20. The landlord testified that 2 accent pieces in the unit were broken during the tenancy. One accent piece was of a person playing music and the other was a

vase. He found these pieces in the cupboards. He does not have a quote on the cost of replacement but he estimates it would cost \$100.00 each to replace these items. These accent pieces were in the unit when he purchased the unit in 2011. The landlord submitted photographs of the broken accent pieces (LL #3) and a photograph of the accent piece of the person playing music prior to the start of the tenancy (LL #6).

Tenant Position

- 21. The tenant accepts responsibility for the cleaning. She testified that when they moved into the unit they removed all the things that could be broken because they had a child in the unit. She cannot recall that these items were broken.

Analysis

- 22. I have reviewed the testimony and the evidence presented of the landlord and the tenant. I find that there are 2 issue that needs to be addressed; (i) did the unit need to be cleaned; and (ii) were there items damaged. I find that the tenant is accepting responsibility for the claim for cleaning. The amount the landlord is claiming is reasonable. As the amount the landlord is claiming is reasonable, the claim for cleaning succeeds in the amount of \$77.60.
- 23. With regard to the accent pieces. Based on the photographs presented I find that the 2 accent pieces were broken during the tenancy. The landlord did not present any documentation to show the cost of replacement. As the landlord did not submit a quote or an estimate on the replacement cost, I award an arbitrary amount of \$80.00 for the replacement of the 2 accent pieces.

Decision

- 24. The landlord’s claim for damages succeeds as per the following:
 - a) Cleaning.....\$77.60
 - b) Replacement of the 2 accent pieces\$80.00
 - c) **Total owing to the landlord\$157.60**

Issue 4: Application for Security Deposit

- 25. 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

26. The tenant testified that they paid an \$800.00 security deposit in April 2019.

Landlord Position

27. The landlord acknowledges an \$800.00 security deposit was paid in April 2019.

Analysis

28. A security deposit in the amount of \$800.00 was paid in April 2019. The landlord shall retain the security deposit as he has been successful in the claim for the payment of rent, late fees and compensation for damages. The interest rate on security deposits for 2019 is 0%.

Decision

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

Issue 5: Hearing Expenses - \$20.00

30. 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

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

Analysis

32. 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 tenants are responsible to pay the landlord's hearing expenses in the amount of \$20.00.

Decision


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

Summary of Decision

34. The landlord is entitled to the following:

a) Payment of rent.....	\$5181.20
b) Late fees	\$75.00
c) Compensation for damages	\$157.60
d) Hearing expenses	\$20.00
d) Less the security deposit.....	(800.00)
e) Total owing to the Landlord	<u>\$4633.80</u>

May 19, 2020
Date


Residential Tenancies Section