

Residential Tenancies Tribunal

Decision 20-0130-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:00 a.m. on August 11, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL via Bell Teleconferencing System.
2. The applicant, [REDACTED] represented by [REDACTED] and [REDACTED], hereafter referred to as the tenant, participated in the hearing through a conference call.
3. The respondent, [REDACTED], hereafter referred to as the landlord participated in the hearing through a conference call. The respondent, [REDACTED], did not attend the hearing but he was represented by [REDACTED].

Issues before the Tribunal

4. The tenant is seeking the following:
 - a. Return of the security deposit in the amount of \$1875.00;
5. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$2500.00;
 - b. Application of the security deposit;
 - 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 8, 14, 18 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 - \$2500.00

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 on November 14, 2019 when the tenant viewed the unit there was work being carried out. That same day they paid a security deposit and agreed to rent the unit for their client. The tenancy was to begin on November 24, 2019 for three months with rent set at \$2500.00 per month. On November 18, 2019 the tenant's client viewed the unit. At that time they were still in the process of doing work on the unit. The client was advised that the unit would be ready for November 24, 2019. Sometime between November 18 and 20, 2019, the client notified her that they would not be taking the unit on November 24, 2019.
10. The landlord testified that they had advertised the unit for rent on Kijiji. Once the tenant paid the security deposit they removed the ad right away. When they were notified by the client that they would not be taking the unit the ad was put back up on Kijiji. She did not receive any responses to the ad. The ad was removed on December 20, 2019.
11. The landlord further testified that the unit was ready for November 24, 2019. She is seeking rent for the period November 24 – December 23, 2019.

Tenant Position

12. The tenants testified that a security deposit was paid on November 14, 2019 for a client. The tenancy was to begin on November 24, 2019. When they viewed the unit repairs were being carried out. Their client viewed the unit on/or about November 18, 2019. After he viewed the unit he notified the landlord that day or sometime between November 18 and 20, 2019 that he would not be taking the unit. They also testified that they never visited the unit on November 24, 2019 to see if the unit was ready for occupancy.

Analysis

13. I have reviewed the testimony of the landlord and tenant. I find that there is one issue that needs to be addressed; is there rent owing. I find that on November 14, 2019 the tenant paid an \$1875.00 security deposit and they had a verbal agreement to rent the unit beginning on November 24, 2019. Sometime between November 18 and 20, 2019 the landlords was notified that they would not be taking the unit. Under section 8(1)(c) any agreement less than 6 months would be considered a month to month tenancy. The notice required to be given on a month to month tenancy is not less than one month before the end of a rental period where the residential premises is rented from month to month as per section 18(1)(b) of the Act. As there was a verbal agreement in place to start on November 24, 2020, the tenant would be required to give a month's written notice to vacate the unit. As the tenant did not give the proper termination notice and did not move into the unit, the landlords did advertise the unit for rent right away, however the landlords were not able to rent the unit for the period of November 24, 2019 – December 23, 2019. As the landlords tried to mitigate their loss right away but were unsuccessful in obtaining a tenant, the landlords' claim for payment of rent succeeds in the amount of \$2500.00.

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14. The landlords' claim for the payment of rent succeeds as per the following:
- a) Rent for November 24 – December 23, 2019.....\$2500.00

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.

Tenant Position

16. The tenants testified that a \$1875.00 security deposit was paid on November 14, 2019.

Tenant Position

17. The landlord acknowledges that a \$1875.00 security deposit was paid on November 14, 2019.

Analysis

18. A security deposit in the amount of \$1875.00 was paid on November 14, 2019. As the landlords have been successful in the claim for payment of rent, the landlords shall retain the security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$20.00

20. 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

21. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

22. The cost the landlords 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 landlords' claim is successful, the claim for hearing expenses succeeds in the amount of \$20.00.

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23. The landlords' claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

24. The landlords are entitled to the following:

- a) Payment of rent..... \$2500.00
- b) Hearing expenses \$20.00
- c) **Less the security deposit.....(1875.00)**
- d) **Total owing to the landlords \$645.00**

August 20, 2020
Date


Residential Tenancies Section