

Residential Tenancies Tribunal

Decision 19-0005-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:25 a.m. on January 30, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The tenant was not present or represented at the hearing. Prior to the hearing I called the telephone number on file for the tenant but the number was no longer in service. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
5. According to Rule 29.05(2)(a) a respondent to an application must be served with 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 affidavit of service submitted by the landlord shows that the notice of this hearing was sent by e-mail to the tenant on January 3, 2019 and the tenant has had 26 days to provide a response. The landlord submitted copies of e-mails between the landlord and tenant dated December 20, 2018 and a copy of the e-mail from the tenant dated January 3, 2019 stating she received the form. 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 her absence.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$3,130.68;
 - b. Late fees;
 - c. Damages;
 - d. Storage fees, moving costs and cleaning costs;
 - e. 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 10, 18, 19, 31, 32 and 34 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 - \$3130.68

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 stated that the tenant moved into the unit on March 1, 2018 for a one year term (LL #1) with rent set at \$1300.00 per month due on the 1st of each month. A security deposit in the amount of \$975.00 was paid on February 16, 2018.
12. The landlord testified they are seeking rent for the months of October and November 2018 and for the period December 1 – 14, 2018. Rent was received for the months of March – September 2018 as per the rent ledger (LL #7). The rent for October 1, 2018 was not paid. On October 9, 2018 they received an e-mail from the owner of the house informing them the tenant in the downstairs unit said the upstairs tenant had skipped out. They posted a notice to enter (LL #5) on the door to inspect the unit on October 10, 2018. When they went to the property on October 10, 2018 they felt the tenant had abandoned the unit. They posted a notice of abandonment (LL #5) on the door on October 11, 2019 to enter the unit on October 12, 2019. When they

went to the unit on October 12, 2018 they determined the tenant had vacated and they changed the locks.

13. The landlord further testified that on October 12, 2018 they posted ads (LL #6) on Kijiji, facebook market place, the company's website, Craig's List and through word of mouth. The unit was re-rented on December 14, 2018.

Analysis

14. I have reviewed the testimony and evidence of the landlord and I find the tenant signed a one year lease for the period March 1, 2018 – February 28, 2019. On October 12, 2018 the landlord determined the tenant had vacated the unit and the landlord advertised the unit immediately as required under 10.(1)4. The unit was re-rented for December 14, 2018. I also find the tenant did not terminate the tenancy as required under section 18.(1) (c)

18.(1)A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term

15. As the tenant did not terminate the tenancy as per section 18.(1)(c) and the landlord mitigated their losses, the landlord would be entitled to the full amount of rent for the months of October and November 2018 and \$555.62 for December 1 - 13, 2019 ($\$1300.00 \times 12 \text{ months} = \$15,600.00 \div 365 \text{ days} = \$42.74 \text{ per day} \times 13 \text{ days} = 555.62$).

Decision

16. The landlord's claim for rent succeeds as per the following:
 - a. Rent owing for October 2018\$1300.00
 - b. Rent owing for November 2018.....\$1300.00
 - c. Rent owing for December 1 - 13, 2018\$555.62
 - d. Total arrears.....\$3155.62

Issue 2: Late fees - \$75.00

Landlord Position

17. The landlord testified they are seeking payment of late fees in the amount of \$75.00 as the tenant has not paid the rent since October 2018.

Analysis

18. The rental arrears has been established in paragraph 16 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 October 2018 the late fees have exceeded the maximum amount of \$75.00.

Decision

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

Issue 3: Replacement of heater - \$107.16

20. In an application for damages the burden of proof lies with the landlord to establish, on the balance of probabilities, that the damage exists and that the tenant is responsible for the costs of repairs.

Landlord Position

21. The landlord testified that the front plate was missing from the heater in the living room and the heater had to be replaced. An employee of the company spent 2 hours (at a rate of \$19.15) replacing the heater. The cost of the heater was \$65.42 as per the packing slip from Kent (LL #4). The heater was between 5 – 8 years old. The landlord presented a copy of the incoming inspection report (LL #2) and a photograph of the heater at the end of the tenancy (LL #3).

Analysis

22. I have reviewed the testimony of the landlord. Based on the photograph taken at the end of the tenancy and the ingoing inspection report I find the heater was damaged during the tenancy and had to be replaced. Further the amount the landlord is claiming for the labour to have the heater replaced is reasonable.

Decision

23. The landlord's claim for replacement of the heater succeeds in the amount of \$103.72 (\$38.30 for labour + \$65.42 for the heater = \$103.72).

Issue 4: Compensation for movers and storage fees - \$768.22

Landlord Position:

24. The landlord testified that when they discovered the tenant had abandoned the unit they hired a company [REDACTED] (LL #11) to remove the tenant's items and to bring the items to a storage unit. They were charged \$316.25 for the move. They are also claiming 3 hours labour at a rate of \$19.15 for the time the landlord spent at the unit while the movers were removing the furniture from the unit. The landlord presented photographs of the movers removing items from the unit (LL #10).
25. The landlord further testified the homeowner was charged \$260.47 for the rental of the storage unit for the period October 25 – December 20, 2018 but the landlord presented a copy of the payment history from Metro Self Storage (LL #12) in the amount of \$171.98 for payments received on October 25th and November 24th, 2018. On December 20, 2018 the tenant sent an e-mail to the landlord giving them permission to donate the items that she left behind.

Analysis

26. The tenant abandoned the property and she left items in the unit. The landlord incurred cost to have the items removed from the unit and to store them as required under Section 32.(1) of the Act. Under Section 32.(2) the landlord is required to store the items for 30 days. As the landlord stored the items for 60 days, the landlord would only be awarded cost for 30 days.

Decision

27. The claim for compensation for movers, landlord's time and storage fees succeeds in the amount of \$457.19. \$316.25 for the cost of the movers plus \$57.45 for the time the landlord spent at the unit with the movers plus \$83.49 for the cost of the storage unit for 30 days for a total of \$457.19.

Issue 5: Cost of cleaning and garbage removal - \$450.30

Landlord Position

28. The landlord testified they hired [REDACTED] (LL #14) to clean the unit. The unit was very dirty when the tenant vacated. The cleaning consisted of the fridge, stove, oven, walls, windows, light fixtures, floors, baseboards and the bathroom. They were charged \$316.25 to have the unit cleaned.

29. The landlord further testified 2 of their employees each spent 3½ hours picking up the debris and garbage that was left inside and outside the unit. The employees had to pick up the debris and garbage that was left inside and outside as well as remove the items that were left on the deck. They also had to pick up the cigarette butts that were on the ground. The rate they are charging is \$19.15 per hour for 7 hours for a total of \$134.05. The landlord submitted photographs of the inside and outside of the unit (LL #s 10, 13 & 15). The photographs show the condition of the unit, the items and garbage that was left inside and outside the unit as well as the cigarette butts on the ground.

Analysis

30. I have reviewed the testimony of the landlord and the evidence presented. Based on the photographs presented the unit needed to be cleaned when the tenancy ended and there was debris and garbage left inside and outside the unit. I find the amount the landlord is claiming to have the unit cleaned and to remove the garbage and debris is reasonable.

Decision

31. The claim for cleaning and the removal of debris succeeds in the amount of \$450.30 (\$316.25 for the cleaner + \$134.05 for the removal of the items left behind = \$450.30).

Issue 6: Application for Security Deposit

32. 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

33. The landlord testified a \$975.00 security deposit was paid on February 16, 2018 as per the rent ledger (LL #7).

Analysis

34. A security deposit was paid in February 2018. As the landlord has been successful in their claim for rent, late fees, damages, compensation for moving, storage fees, cleaning and garbage removal they shall retain the \$975.00 security deposit as outlined in this decision and order.

Decision

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

Issue 6: Hearing Expenses - \$42.38

36. 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

37. The landlord paid an application filing fee in the amount of \$20.00 and incurred costs of \$22.38 to have photographs developed as per the receipts from [REDACTED] (LL #16). The landlord is seeking these costs.

Analysis

38. The costs the landlord incurred to make the application and to have the photographs developed are considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. Therefore, I find the tenant is responsible to cover the cost of the hearing expenses in the amount of \$42.38.

Decision

39. The tenant shall pay the landlord's hearing costs in the amount of \$42.38.


Summary of Decision

40. The landlord is entitled to the following:

a) Rent owing.....	\$3155.62
b) Late fees	\$75.00
c) Compensation for Replacement of the heater.....	\$107.16
d) Compensation for Movers and storage fees.....	\$768.22
e) Compensation for cleaning and garbage removal.....	\$450.30
f) Hearing expenses	\$42.38
g) LESS: Security deposit	(\$975.00)
h) Total Owing to Landlord.....	<u>\$3623.68</u>

April 12, 2019

Date


Residential Tenancies Section