

Residential Tenancies Tribunal

Decision 19-0144-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:45 a.m. on April 11, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord amended the claim for payment of rent from \$1125.00 to \$2250.00 for the period October – November 2018.
5. The tenant was not present or represented at the hearing. Prior to the start of the hearing I called the telephone number on file but the number is 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*.
6. 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.

7. The affidavit of service submitted by the landlord shows that the notice of this hearing was sent electronically on March 26, 2019 and the tenant has had 15 days to provide a response. The landlord submitted a copy of the text message sent to the tenant on March 26, 2019 along with copies of text messages between himself and the tenant during the month of October 2018. 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

8. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$2250.00;
 - b. Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 10, 14 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 - \$2250.00

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

Landlord Position

12. The landlord testified that the tenant signed a one year term agreement (LL #1) to start on September 1, 2018 with rent at \$1500.00 per month due on the 1st of each month. He received the rent for the month of September and on October 5, 2019 he received \$750.00 towards October's rent. Also on October 5, 2018 he received a text message from the tenant informing him that she would be leaving the unit within the next two weeks. The tenant vacated the unit on/or about October 15, 2019.

13. The landlord testified that he advertised the unit right away on Kijiji. On October 10, 2018 he sent a text message to the tenant informing her that he has someone interested in viewing the unit on Friday, October 12, 2018. Then on October 30, 2018 he showed the unit to perspective tenants and they agreed on October 31, 2018 they would rent the unit beginning December 1, 2018. The new tenants paid a security deposit in the amount \$1050.00 in two installments. \$525.00 was paid on November 2, 2019 and on November 10, 2018. The landlord presented copies of the text messages between the landlord and the tenant from October 5 - 12, 2019 (LL #2), a copy of the rent receipt dated October 5, 2019 (LL #3), copies of the text messages between the landlord and the new tenants for the period October 30 – November 2, 2018 (LL #4) and a copy of the two receipts for the security deposit for the new tenants (LL #5).

Analysis

14. I have reviewed the testimony and evidence of the landlord and I find the tenant had signed an agreement for one year. On October 5, 2018 the tenant paid half of the rent for October and she sent a text message that she was leaving within two weeks. She vacated on October 15, 2018. I also find the landlord tried to mitigate his losses as he had a showing on October 12, 2018 and October 30, 2018. Further, the unit was re-rented on October 31, 2018 for December 1, 2018.

Decision

15. The landlord’s claim for rent succeeds as per the following:

a. Rent owing for October 2018	\$750.00
b. Rent owing for November 2018.....	<u>\$1500.00</u>
c. Total arrears.....	<u>\$2250.00</u>

Issue 2: Application for Security Deposit

16. 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

17. The landlord testified that the tenant paid a security deposit in the amount of \$1125.00 on August 31, 2018.

Analysis

18. A security deposit was paid on August 31, 2018. As the landlord has been successful in his claim for the payment of rent, he shall retain the \$1125.00 security deposit as outlined in this decision and order.

Decision

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

Issue 3: 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 landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

Analysis

22. 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*. Therefore, I find the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

23. The tenant shall pay the landlord's hearing costs in the amount of \$20.00.

Summary of Decision

24. The landlord is entitled to the following:

- a) Payment of rent\$2250.00
- b) Hearing expenses \$20.00
- c) **LESS: Security deposit****(\$1125.00)**
- d) **Amount owing to the landlord****\$1145.00**

July 3, 2019
Date


Residential Tenancies Section