

## Residential Tenancies Tribunal

Decision 19-150-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:20 am on 03 April 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” participated in the hearing by teleconference. The respondent, [REDACTED], hereinafter referred to as “the landlord” also participated.

### Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$500.00.
4. The landlord is seeking an order for compensation for a payment of rent in the amount of \$1600.00, a payment of late fees in the amount of \$75.00, a payment of utilities in the amount of \$148.96 and authorization to retain the security deposit.

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 15 of the *Residential Tenancies Act, 2018*.

## Issue 1: Rent - \$1600.00

### Relevant Submissions

#### The Landlord's Position

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant, commencing 01 May 2018, and a copy of the executed lease was submitted at the hearing (MO #1). The agreed rent was set at \$750.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$500.00.
8. The landlord stated that he was notified on 18 November 2018 that the tenant had been experiencing mould issues at the unit and when he went to the unit on 20 November 2018 he found that the tenant had moved out.
9. The landlord stated that he had reminded the tenant that he was in a fixed-term agreement and he needed adequate notice if the tenant wished to terminate his agreement. Recognizing that the tenant wished to move out he therefore made him the following offer: if the tenant paid his rent for December 2018 prior to 01 December 2018, he would consider the rental agreement to have been converted to monthly agreement and the tenant could therefore issue him a 1-month notice that he was terminating his agreement at the end of December 2018.
10. The landlord testified that the tenant did not pay his rent for December 2018 until 03 December and he stated that this late payment therefore voided the offer. Although the tenant did not give any written notice that the agreement was terminated, he turned the keys over to the landlord at the end of December 2018 and sought to have his security deposit returned to him.
11. The landlord stated that when the tenant failed to pay his rent for December 2018 on time he assumed that the tenant had abandoned the unit and he started to immediately advertise it for rent. He submitted advertisements at the hearing (MO #2) showing that he had placed ads with Kijiji on 01 December 2018, 02 January 2019, 30 January 2019 and on 12 February 2019.
12. The landlord testified that he was not able to secure new tenants until 20 February 2019 and he submitted a copy of this new rental agreement at the hearing (MO #3). He pointed out that the rent in this new agreement is set at \$700.00 and he claimed that he had to reduce the rent from \$750.00 to entice a new renter.
13. The landlord is seeking an order for a payment of \$1500.00 for the lost rental income he suffered during January and February 2019 and he is also seeking an additional \$100.00 in compensation for the difference in rent he is now charging

compared to what the tenant had been paying, \$50.00, for the period ending 30 April 2019, when the tenant's lease was set to expire.

### The Tenant's Position

14. The tenant stated that in the summer of 2018 he discovered mould at the rental unit and he contacted the landlord about that matter and the landlord visited the premises and had the mould cleaned up.
15. He stated that on 16 November 2018 he was moving a sectional couch out of his apartment and he discovered that it was covered in mould and he stated that he had also found mould underneath the kitchen sink and in some cupboards.
16. The tenant stated that he had contacted the landlord about that matter on 18 November 2018 and informed that he could not continue residing at the unit because of the issue with the mould. The tenant stated that he moved out on that date.
17. The tenant stated that the landlord informed him that he could not terminate his agreement on just 12 days' notice. He stated that he appreciated the landlord's point of view and he claimed that it was agreed that he would pay rent for December 2018 even though he would not be residing at the unit, and the tenancy would end on 31 December 2019. On 31 December 2018 he contacted the landlord and asked where he could drop off the keys to rental unit and he stated that he also asked the landlord when he would be getting his security deposit back. He stated that the landlord had told him that he first had to do an inspection of the unit and he also informed him that he was entitled to hold onto the deposit for 10 or 15 days after the tenant moved out while he assessed the property.
18. The tenant acknowledged that he had paid his rent late for December 2018, but he denied that he had an agreement with the landlord that he had to pay his rent in advance before he could terminate the agreement. He did claim that he had sent the landlord a written notice of termination, though, in the form of a text-message, on 18 November 2018, and the landlord was aware of the fact that he had already vacated the unit when he visited on 20 November 2019.

### **Analysis**

19. The question to be answered here is whether there was an agreement that the tenancy would end on 31 December 2018 if the tenant paid his rent for that month. If there was such an agreement and if the tenant did pay his rent, as agreed, then I am of the view that it would be totally unfair of the landlord to then turn around and sue the tenant for rent for January 2019 after he had given him verbal assurances that he could terminate his agreement early.

20. The landlord submitted into evidence an advertisement he had placed on Kijiji on 01 December 2018 at 11:18am (MO #2). That advertisement states that the rental unit is immediately available for rent.
21. I cannot make sense of why the landlord would be listing the unit for rent on 01 December 2018 for immediate occupancy if his version of their agreement was accurate. According to the landlord, only if the tenant paid him rent for December 2018 prior to 01 December 2018 and only if he received a 1-month termination notice with an effective termination date of 31 December 2018 would he be satisfied that their agreement was ending on that date.
22. As the tenant failed to pay his rent until 03 December 2018 and, as the landlord contends, as he did not receive a written notice of termination, it makes no sense to me as to why he would be advertising the unit for immediate occupancy. If his version of their agreement was correct, the landlord would presumably assume that the agreement is not terminated and the tenancy is still on-going.
23. What seems more probable is the tenant's version of events—the tenant moved out of the unit on 18 November 2018 and it was agreed that the tenant would pay his rent for December 2018, even though he was not residing at the unit, on the understanding that the rental agreement terminated at the end of December 2018.
24. That version of events is further bolstered by the fact that the landlord made no demand for a payment of rent on 31 December 2018 when the tenant was seeking return of his security deposit and there was no discussion on that date that the landlord would be keeping the deposit as the tenant had broken the lease early. Both the landlord and the tenant stated that the conversation on that date concerned how long the landlord was permitted to retain the deposit after the tenancy had ended.
25. As the landlord and the tenant had agreed that the tenancy would end on 31 December 2018 I find that the landlord's claim for a payment of rent for January and February 2019 does not succeed.

## **Decision**

26. The landlord's claim for a payment of rent does not succeed.

## **Issue 2: Late Fees - \$75.00**

### **Relevant Submissions**

#### The Landlords' Position

27. The landlord has assessed late fees as the tenant had not paid his rent for December 2018 until 03 December 2018.

### The Tenant's Position

28. The tenant stated that he did not realize that he had paid his rent late for December 2018 but he stated that the hearing that he was willing to pay this fee.

### **Analysis**

29. Section 15 of the *Residential Tenancies Act, 2018* states:

#### ***Fee for failure to pay rent***

***15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.***

30. Regarding the late fees, the minister has prescribed the following:

*Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:*

*(a) \$5.00 for the first day the rent is in arrears, and*

*(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

31. As the tenant did not contest this portion of the landlord's claim, the landlord's claim succeeds.

### **Decision**

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

### **Issue 3: Utilities - \$148.96**

#### **Relevant Submissions**

#### The Landlord's Position

33. The landlord stated that the tenant had the electricity account taken out of his name after he vacated the unit and the landlord was charged for the electricity that was consumed at the unit during January and February 2019.
34. He submitted a bill at the hearing showing that he was charged \$100.06 for the period from 11 January to 12 February 2019 and he was also carrying an unpaid balance of \$47.57. The landlord is seeking a payment of \$148.96.

**Analysis**

35. I have determined that the landlord and the tenant had agreed that the tenancy would end on 31 December 2018 so long as the tenant paid rent for December.
36. As the tenancy ended on 31 December 2018 I find that the landlord is not entitled to any utility costs he had incurred after that date. As such, his claim does not succeed.

**Analysis**

37. The landlord’s claim for the costs of utilities does not succeed.

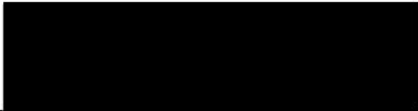
**Issue 4: Security Deposit**

38. The tenant paid a security deposit of \$500.00 and receipt of that deposit is acknowledged in the submitted lease. As the landlord’s claim for late fees has succeeded, he shall retain \$75.00 of that deposit and refund the remaining amount to the tenant.

**Summary of Decision**

39. The tenant is entitled to the following:
  - a) Refund of Security Deposit.....\$500.00
  - b) LESS: Late Fees ..... (\$75.00)
  - c) Total Owing to Tenant.....\$425.00

14 June 2019  
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 Date

  
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 John R. Cook  
 Residential Tenancies Tribunal