

Residential Tenancies Tribunal

Decision 19-0161-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on March 21, 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 as tenant1 participated in the hearing. The tenant, [REDACTED], hereafter referred to as tenant2 did not attend the hearing and she was not represented at the hearing.

Preliminary Matters

4. The landlord amended the claim for payment of rent from \$2700.00 to \$2750.00 and discontinued the claim for vacant possession.
5. The tenant [REDACTED] was not present or represented at the hearing. 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 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 by e-mail to the tenant on March 5, 2019 and the tenant has had 13 days to provide a response. The landlord submitted a copy of the e-mail sent to the tenant and a copy of a text message stating she received the e-mail. 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 \$2750.00;
 - b. Application of the security deposit;
 - c. 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 14, 19 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 - \$2750.00

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 tenants moved into the unit on February 1, 2018. A term agreement (LL #1) was signed for the period March 1, 2018 – February 28, 2019 with rent set at \$1000.00 per month due on the 1st of each month. The rent was paid through interac e-transfer and the rent was paid in full up to December 2018. He said the last time he received any monies towards the rent was on January 28, 2019 in the amount of \$250.00.

13. The landlord further testified that on February 28, 2019 he served the tenants by a text message with a termination notice (LL #2) under section 19 of the Act to vacate on March 11, 2019. The tenants vacated on March 12, 2019. The landlord said he was never notified that tenant1 had vacated the unit back in August 2018. The landlord presented a text message from tenant2 stating she received the e-mail notifying her about the hearing and she doesn't have anything for him. It also states she is staying with a friend so she will be able to pay down the rent owing once she has some money coming in (LL #4).

Tenant Position

14. Tenant1 testified that he signed a lease with tenant2 for one year but he moved out of the unit before August 1, 2018. He never notified the landlord he was moving out. Tenant1 further testified that when he moved out tenant2 had someone who was going to take over the lease.

Analysis

15. I have reviewed the testimony and evidence of the landlord and tenant1 and I find there was a lease agreement in place from March 2018 – February 2019 even though tenant1 moved out of the unit before August 1, 2018. I also find \$750.00 ($\$1000.00 - \$250.00 = \750.00) is owing for the month of January and no rent has been paid for February and March 2019. Further the landlord served a termination notice on the tenants to vacate by March 11, 2019 and the tenants vacated by March 12, 2019. As the landlord served a termination notice and the tenants vacated on the notice, the landlord would only be entitled to rent up to the day the tenants vacated, March 12, 2019. The amount of rent owing for March is \$394.56 ($\$1000.00 \times 12 \text{ months} = \$12,000.00 \div 365 \text{ days} = \$32.88 \text{ per day} \times 12 \text{ days} = \394.56).

Decision

16. The landlord's claim for rent succeeds as per the following:
- | | |
|--|------------------|
| a. Rent owing for January 2019 | \$ 750.00 |
| b. Rent owing for February 2019..... | \$1000.00 |
| c. Rent owing for March 1 - 12, 2019 | <u>\$394.56</u> |
| d. Total arrears..... | <u>\$2144.56</u> |

Issue 2: Application of the Security Deposit

17. 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

18. The landlord testified a \$750.00 security deposit was paid on February 1, 2018.

Analysis

19. A security deposit was paid on February 1, 2018. As the landlord has been successful in his claim for the payment of rent he shall retain the \$750.00 security deposit as outlined in this decision and order.

Decision

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

Issue 3: Hearing Expenses - \$20.00

21. 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

22. The landlord paid an application filing fee (LL #3) in the amount of \$20.00. The landlord is seeking this cost.

Analysis

23. The costs 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 tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

25. The landlord is entitled to the following:

a) Rent owing	\$2144.56
b) Hearing expenses	<u>\$20.00</u>
c) LESS: Security deposit	<u>(\$750.00)</u>
d) Total Owing to Landlord	<u>\$1414.66</u>

May 14, 2019
Date


Residential Tenancies Section