

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0384-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on June 13, 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 through a conference call.
3. The tenant, [REDACTED] hereafter referred to as the tenant, participated in the hearing.

Preliminary Matters

4. The landlord amended the claim for payment of rent from \$2600.00 to \$2500.00 and discontinued the claim for payment of late fees.
5. The tenant confirmed that she received the Application for Dispute Resolution on May 22, 2019.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Validity of the termination notice;
 - b. Payment of rent in the amount of \$2500.00;
 - c. Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
8. Also relevant and considered in this case are Sections 19, 34 and 35 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Validity of termination notice and payment of rent - \$2500.00

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

Landlord Position

10. The landlord testified that the tenant moved into the unit on July 1, 2018 for a one year term with rent set at \$1300.00 per month due on the 1st of the month. On April 30, 2019 they received a text message from the tenant stating that May would be her last month at the rental unit. They sent a response requesting a formal termination notice. The message also stated that they reviewed her lease and it appears that her lease doesn't expire until the end of June. May 1, 2019 would be the correct time to give a notice for the end of June 2019. He further testified that they didn't receive a reply so on May 4, 2019 they sent another message checking to see if the tenant had made a decision on moving out so that they could advertise if need be. The tenant responded and said she was moving out ASAP. On May 7, 2019 they started advertising the unit for rent on their website, Kijiji and social media. They had several viewings and the unit was not re-rented as of the date of the hearing. The landlord said they took back possession of the unit on June 3, 2019. A copy of the rental agreement (LL #1) was submitted into evidence.
11. The landlord testified that on May 16, 2019 they received \$100.00 towards the rent for May 2019.

Tenant Position

12. The tenant testified that when she sent the text message to the landlord on April 30, 2019 stating she was moving out, she did not state the date she was leaving. She removed her belongings sometime in May 2019 and she did not pay the full rent for the month of May 2019. She testified that when she was moving out her belongings the landlord was showing the unit.

Analysis

13. I have reviewed the testimony and evidence of the landlord and the tenant. I have determined that there are two issues that need to be addressed; (i) did the tenant give a proper termination notice; and (ii) is the tenant responsible for rent. The tenant signed a rental agreement for the period July 1, 2018 to June 30, 2019. The tenant sent a text message to the landlord on April 30, 2019 stating she was moving out. The message did not state the date she would be vacating. Section 18.(9)(c) states that when giving a termination notice the notice must state the date on which the rental agreement is terminating. As the notice did not state the date, the notice given was not a proper termination notice.
14. With regard to the payment of rent, the tenant acknowledges she did not pay the full rent for the month of May 2019 and she stated that when she was removing her belongings from the unit in May 2019, the landlord was showing the unit to other people. As the tenant had a rental agreement until the end of June 2019, a proper termination notice was not given and the landlord was mitigating his losses, the claim for payment of rent succeeds up to the date of the hearing in the amount of \$1200.00 for the month of May 2019 and \$555.62 ($\$1300.00 \times 12 \text{ months} = \$15,600.00 \div 365 \text{ days} = \$42.74 \text{ per day} \times 13 \text{ days} = \555.62) for the period June 1 – 13, 2019 for a total of \$1755.62.

Decision

15. The landlord's claim for rent succeeds as per the following:
 - a. Rent owing for May 2019\$1200.00
 - b. Rent owing for June 1 - 13, 2019\$555.62
 - c. Total rent owing\$1755.62

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 a \$975.00 security deposit was paid on May 24, 2018.

Tenant Position

18. The tenant acknowledges she paid a security deposit in the amount of \$975.00.

Analysis

19. A security deposit was paid in May 2018. As the landlord has been successful in his claim for the payment of rent, they shall retain the \$975.00 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 in the amount of \$20.00. The landlord is seeking this cost.

Analysis

23. 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*. As the landlord's claim was successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

25. The landlord is entitled to the following:

a) Payment of rent	\$1755.62
b) Hearing expenses.....	\$20.00
c) Less the security deposit	(975.00)
d) Total owing to Landlord.....	<u>\$800.62</u>

October 1, 2019

Date

[REDACTED]
Residential Tenancies Section