

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-390-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 10 June 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$375.00;
 - An order for a return of missing possessions valued at \$175.00; and
 - An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is Section 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 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 she has been properly served. The landlord testified that he served the tenant with notice of the hearing, by text-message, on 30 May 2019 and a copy of that message was submitted at the hearing. The landlord also submitted a copy of other text-messages in which he had been communicating with the tenant using that cellular number. The tenant has had 10 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
7. The landlord amended his claim and stated that he was no longer seeking an order for possession of the rented premises as the tenant vacated on 08 June 2019. He also stated that he was seeking an additional month's rent, bringing the total claim to \$950.00.

Issue 1: Missing Possessions - \$175.00

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 January 2019 and a copy of the executed lease was submitted at the hearing (█ #1). The agreed rent was set at \$575.00 and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$287.50.
9. The landlord issued the tenant a termination notice on 30 April 2019 and she vacated the property on 08 June 2019.
10. The landlord stated that he had equipped the rental unit with a washer and dryer and in the rental agreement it states that the use of those appliances is included in the monthly rent.
11. The landlord testified that he was approached by the police about allegations that the tenant had been committing fraud. He stated that he was informed by them that the tenant had been accused of accepting money from people in exchange for goods that were never delivered.

12. After he was informed of these accusations, he conducted an inspection of the rental unit and discovered that the washer and dryer were missing. He testified that he was informed by the tenant that she had sold the washer and dryer as she had mistakenly thought that they had been left behind by the previous tenants.
13. The landlord stated that the washer and dryer were approximately 5 years of age and were in good condition when the tenancy began.
14. He is seeking \$175.00 in compensation for these missing appliances. No receipts or quotes were submitted at the hearing.

Analysis

15. I accept the landlord's claim that he had provided the tenant with a washer and dryer at the beginning of her tenancy and that she has since removed it.
16. Although no receipts or quotes were submitted at the hearing, I find that the landlord's claim for \$175.00 in compensation to be more than reasonable.

Decision

17. The landlord's claim for compensation for missing possessions succeeds in the amount of \$175.00.

Issue 2: Rent - \$950.00

Relevant Submissions

18. The landlord stated that the tenant's rent was paid on her behalf by the [REDACTED] He testified that he had been receiving the full rent of \$575.00 every month from that Department since February 2019.
19. However, the landlord stated that in January 2019 he had only received \$200.00 from [REDACTED] and the tenant had been carrying a balance of \$375.00 since the beginning of that month.
20. Because the tenant had been carrying these arrears, the landlord issued her a termination notice on 30 April 2019 and a copy of that notice was submitted with the landlord's application ([REDACTED] #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 11 May 2019.
21. The tenant did not move out as required and on 01 June 2019 the landlord again received from [REDACTED] the rent payment of \$575.00 for June 2019. The landlord

testified that as he no longer wanted to rent to the tenant he returned that payment to her so she could use that money to find another apartment.

22. The tenant vacated on 08 June 2019.
23. In addition to the \$375.00 that has been owing since January 2019, the landlord is also seeking an order for a payment of \$575.00 for June 2019.

Analysis

24. I accept the testimony of the landlord in this matter and I find that the tenant has not paid rent as required.
25. According to his testimony, he had only received \$200.00 in rent for January 2019 and I therefore find that he is entitled to a payment of the remaining \$375.00 that was owing for that month.
26. Although the landlord had returned to the tenant the rent he had received from [REDACTED] for June 2019, I nevertheless find that he is entitled to rent for June 2019 up to the date she vacated, 08 June 2019, as the tenant had use and enjoyment of rented premises during that period. I calculate that amount to be \$153.36 (\$575.00 for June 2019 ÷ 30 days = \$19.17 per day x 8 days = \$153.36).

Decision

27. The landlord's claim for a payment of rent succeeds in the amount of \$528.36 (\$375.00 + \$153.36)

Issue 3: Security Deposit

28. The landlord stated that the tenant had paid a security deposit of \$287.50 on 01 January 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, he shall retain that security deposit as outlined in this decision and order.

Issue 4: Hearing Expenses

29. The landlord submitted a receipt showing that he paid \$20.00 to file this application.
30. As the landlord's claim has been successful, the tenant shall pay that hearing expense.

Summary of Decision

31. The landlord is entitled to the following:

- a) Compensation for missing possessions \$175.00
- b) Rent..... \$528.36
- c) Hearing expenses..... \$20.00
- d) LESS: Security deposit..... (\$287.50)**

Total Owing to Landlord **\$435.86**

02 October 2019

Date

J

Residential Tenancies Tribunal