

Residential Tenancies Tribunal

[REDACTED] Decision 19-0057-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on June 10, 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 the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord's claim should read \$2610.00 not \$2010.00.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the telephone numbers on file for the tenant but I was unable to reach him. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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.

6. The affidavit of service submitted by the landlord shows that the notice of the hearing for June 15, 2019 was personally served on the tenant on February 12, 2019. The notice of rescheduled hearing was sent by e-mail to the tenant on June 3, 2019. 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 his absence.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$2610.00;
 - b. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 18 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 - \$2610.00

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

Landlord Position

11. The landlord testified that the tenant moved into the unit on August 15, 2018 with a rental agreement to begin on September 1, 2018 for a one year term with rent set at \$1200.00 per month due on the 1st of each month. On November 19, 2018 the landlord and the tenant signed a mediated agreement. The agreement stated that the tenant would pay the landlord \$2800.00 representing rent arrears up to and including November 19, 2018. Then on November 21, 2018 the tenant paid the landlord the rent owing for the period November 20 – 30, 2018 and the full rent for December 2018. She testified that since the rent was paid on November 21, 2018 she has not received any monies from the tenant. On February 7, 2019 the tenant verbally told the landlord that he was moving out on February 15, 2019 and he vacated on February 12, 2019. The landlord is seeking rent for the months of January and February 2019 in the amount of \$2400.00 (\$1200.00 x 2 months = \$2400.00).

12. The landlord further testified that on February 9, 2019 she had a For Rent sign placed in the window. That same day she placed an ad on Kijiji, Buy and Sell and NL Classifieds. She re-rented the unit for April 1, 2019. The landlord presented a photograph of the For Rent sign in the window and copies of the ads (LL #3)
13. The landlord also testified that the tenant had sub-let a room. On November 21, 2018 the sub-leasee moved out and the tenant asked the landlord to return the rent to the sub-lessee for the remaining days in November 2018 and he would reimburse the landlord. The landlord returned \$210.00 to the sub-leasee on November 26, 2019. She testified that she did not receive the \$210.00 from the tenant. The landlord submitted the receipt from the sub-leasee in the amount of \$210.00 dated November 26, 2018 (LL #2).

Analysis

14. I have reviewed the testimony and evidence of the landlord. 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 September 1, 2018 to August 31, 2019. The tenant verbally told the landlord on February 7, 2019 that he was vacating on February 15, 2019 but he moved out on February 12, 2019. The tenant did not terminate the tenancy as required by section 18.(1)(b). Therefore, the termination notice was not a proper notice. With regard to the payment of rent, I find the landlord's testimony to be credible in that she did not receive rent for the months of January and February 2019. As the landlord did not receive the rent for the months of January and February 2019 and the tenant did not end the tenancy as required by the Act, the tenant shall pay the landlord the rent for the months of January and February 2019 in the amount of \$2400.00 (2 months x \$1200.00 = \$2400.00).
15. I further find that the landlord's testimony was credible in that the tenant asked her to refund the rent to the sub-leasee as the landlord presented a receipt from the sub-leasee. However, this agreement would fall outside a landlord tenant relationship. Therefore, the claim for the \$210.00 fails.

Decision

16. The landlord's claim for rent succeeds in the amount of \$2400.00 for the months of January and February 2019.

Issue 2: Application for 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 that the tenant paid a \$600.00 security deposit by cheque in August 2018. The cheque was returned as NSF. Later the tenant paid the landlord \$600.00 cash for the security deposit.

Analysis

19. A security deposit was paid in 2018. As the landlord has been successful in her claim for the payment of rent, she shall retain the \$600.00 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	\$2400.00
b) Hearing expenses.....	\$20.00
c) Less the security deposit	<u>(600.00)</u>
d) Total owing to Landlord.....	<u>\$1820.00</u>

October 8, 2019

Date

[REDACTED]
Residential Tenancies Section