

Residential Tenancies Tribunal

[REDACTED] Decision 19-0284-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:05 a.m. on July 2, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], represented by [REDACTED], [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.

Preliminary Matters

4. The landlord discontinued the claim for vacant possession and amended the claim for payment of rent from \$2752.00 to \$1870.00.

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$1870.00;
 - b. Hearing expenses.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.

7. Also relevant and considered in this case are Section 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 - \$1870.00

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

Landlord Position

9. The landlord testified that the tenants moved into the unit on November 22, 2017 on a month to month tenancy with rent set at \$747.00 per month due on the 1st of each month. On January 29, 2018 the tenants had a credit of \$4.00. Since that time the rent has never been paid in full. Some months the tenants made a payment, other months they made two payments and there were a few months they never made a payment. On April 11, 2019 a termination notice (LL #2) under section 19 was served on the tenants to vacate on April 30, 2019. The tenants vacated on that date. The total amount of rent owing up to the end of April 2019 is \$1870.00 as per the Statement of Rent Account (LL #3).
10. The landlord further testified that on November 22, 2018 they received a letter from tenant1's doctor recommending that the carpet be removed from the unit. Around the same time they received the letter tenant1 verbally informed them that she was moved out of the unit. The landlords told tenant1 that if she wishes to move out she would have to put the notice in writing to them. On January 26, 2019 tenant1 gave them a letter requesting that she be removed from the lease. After they received this letter they released the tenant from the lease and they reduced the rent for the months of February, March and April 2019.
11. The landlord submitted into evidence the letter from tenant1's doctor dated November 22, 2018 (LL #5) and a copy of the letter from tenant1 dated January 26, 2019 (LL #4).

Tenant Position

12. Tenant2 testified that they do not owe rent for the unit. He paid the rent all of the time. He presented receipts for some of the rent he paid (T #1). He said that tenant1 moved out of the unit the end of September 2018.
13. Tenant1 testified that she moved out of the unit but she did not give the landlords a letter until the end of January 2019.

Analysis

14. I have reviewed the testimony and evidence of the landlord and the tenants. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the rent has never been paid up to date since January 2018. When the landlords released tenant1 from the agreement at the end of January 2019 the joint tenancy ended and \$1634.00 was owed for rent. The new agreement with tenant2 started on February 1, 2019 with rent set at \$290.00 per month. Tenant2 moved out on April 30, 2019 and during that period he made one payment towards the rent in the amount of \$634.00 on February 26, 2019. The amount owing for the period February 1 - April 30, 2019 is \$236.00 (3 months x \$290.00 per month = \$870.00 - \$634.00 = \$236.00). The total amount of rent owing is \$1870.00 (\$1634.00 + \$236.00 = \$1870.00). I further find the receipts that tenant2 submitted are credited in the Statement of Rent Account. Therefore, the claim for payment of rent succeeds in the amount of \$1870.00

Decision

15. The landlord's claim for rent succeeds in the amount of \$1870.00. Tenant1 shall pay \$817.00 (\$1634.00 ÷ 2 = \$817.00) and tenant2 shall pay \$1053.00 (\$817.00 + \$236.00 = \$1053.00)

Issue 2: Hearing Expenses - \$20.00

16. 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

17. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

Analysis

18. 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 is successful, the tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

20. The landlord is entitled to the following:

a) Payment of rent	\$1870.00
b) Hearing expenses	\$20.00
c) Total owing to Landlord..	<u>\$1890.00</u>

October 23, 2019

Date

[REDACTED]
Residential Tenancies Section