

Residential Tenancies Tribunal

Decision 19-293-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 07 May 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:
 - a. An order for a payment of rent in the amount of \$2290.00; and
 - b. 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 and 32 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 a 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 had served the tenant with notice of the hearing, by e-mail, on 23 April 2019 and she has had 13 days to provide a response. The landlord also submitted a copy of that e-mail at the hearing as well as copies of other e-mails where he had communicated with the tenant at that e-mail address. 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 application at the hearing. He stated that he was no longer seeking an order for possession of the rented premises as the tenant moved out on 26 April 2019. He also stated that he was seeking an additional \$900.00 in rent for a total claim of \$3190.00.

Issue 1: Rent - \$3190.00

Relevant Submissions

8. The landlord stated that he had entered into a rental agreement with the tenant on 18 December 2018. The agreed rent was set at \$900.00 per month and the tenant paid a security deposit of \$600.00.
9. The landlord submitted rent records at the hearing (■ #1) showing that the tenant had been in rental arrears since the beginning of the tenancy. Accordingly, on 17 April 2019 he issued her a termination notice and required that she vacate on 27 April 2019.
10. On that same day, the landlord issued the tenant a notice informing her that he would be carrying out an inspection of the unit on 18 April 2019. He stated that he entered on 19 April 2019 and he found that the unit was in poor condition and it appeared that the tenant had abandoned the unit and had left her cat behind.
11. Out of concern for the cat, the landlord returned to the unit a couple of more times over the next week to feed it and he stated that he posted a notice of abandonment on the unit on 24 April 2019 (■ #3). He entered and changed the locks to the unit on 26 April 2019.
12. The landlord's rent records show that the tenant had been making payments to the landlord every couple of weeks in installments between \$100.00 and \$300.00. Although she had been making payments up to 18 April 2019, she still owed \$490.00 in rent for February 2019 and no rent was received for March or April 2019.
13. He also stated that he has not yet been able to rent the unit for May 2019 and he claimed that he had not been advertising it for rent as the tenant has not removed all of her possessions from the unit.

Analysis

14. I accept the landlord's claim that the tenant had not paid rent as required and I find that he is therefore entitled to a payment of rent for the period ending 30 April 2019: \$2290.00.
15. I also accept the landlord's claim that he is suffering a loss of rental income for the month of May 2019, but I find that his claim for rent for that month does not succeed as he is not trying to mitigate that loss of income. The landlord has not been making any effort to rent the property for May 2019 and he has elected to leave the tenant's belongings at the unit until such a time as she retrieves them instead of removing those items and placing them in storage.

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$2290.00.

Issue 2: Security Deposit

17. The landlord stated that the tenant had paid a security deposit of \$600.00, in 2 installments, on 18 December 2019 and 22 December 2018. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and order.

Summary of Decision

18. The landlord is entitled to the following:

- a) Rent Owing\$2290.00
- b) LESS: Security Deposit..... (\$600.00)
- c) Total Owing to Landlord\$1690.00

11 July 2019

Date

John R. Cook
Residential Tenancies Tribunal