

Residential Tenancies Tribunal

Decision 19-0448-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:25 am on 23 July 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The tenant, [REDACTED], hereinafter referred to as "the tenant", did not participate

Issues before the Tribunal

3. The landlords are seeking the following:
 - a. An order for a payment of rent in the amount of \$3475.00;
 - b. An order for a payment of late fees in the amount of \$75.00;
 - c. An order for a payment of utilities in the amount of \$64.21; and
 - d. Authorization to retain the \$350.00 security deposit.

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 31 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 him 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) a

respondent 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 he has been properly served. Landlord2 testified that she had served the tenant, by e-mail, on 13 June 2019. A copy of that e-mail was submitted at the hearing with along with the tenant's business card which she stated the tenant had provided to her and which lists his e-mail address. He has had 39 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 his absence.

7. Landlord2 amended the application at the hearing and stated that she was now seeking an order for a payment of \$84.21 for the utilities.

Issue 1: Rent - \$3475.00

Relevant Submissions

8. Landlord2 stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 June 2018 and a copy of the executed lease was submitted with the landlord's application ([REDACTED] #1). The agreed rent was set at \$695.00 per month and the tenant paid a security deposit of \$350.00.
9. Landlord2 stated that in December 2018 they were informed by the tenant that he was moving in with his new girlfriend and he would no longer be residing at the rental unit and he would no longer pay any rent to the landlords. He vacated on 31 December 2019.
10. After the tenant moved out, the landlords entered into a contract with [REDACTED] [REDACTED] and a copy of that contract was submitted at the hearing ([REDACTED] #2). [REDACTED] is a property management company and effective 15 January 2019 that company listed the rental unit for rent and sought potential new tenants.
11. Landlord2 stated that the unit has remained vacant since 31 December 2019 and they have collected no rent since December 2018.
12. The landlords argued that since the tenant had entered into a fixed-term lease with them that was not set to expire until 31 May 2019, he is responsible for the loss of rental income they had suffered between 01 January and 31 May 2019, a period of 5 months.
13. The landlords calculate that they are owed \$3475.00 (\$695.00 per month x 5 months).

Analysis

14. The submitted rental agreement shows that the tenant had entered into a 1-year lease that was not set to expire until 31 May 2019 and the tenant could not terminate the rental agreement until that date.
15. As the tenant vacated the rental unit on 31 December 2019 without terminating the agreement in accordance with *Residential Tenancies Act, 2018* he is considered to have abandoned the rented premises (cf. s. 31.(2) of the *Act*) and he is liable for any damages suffered by the landlords, including a loss of rental income, as a result of that abandonment.
16. I accept the landlord's claim that they had mitigated their damages by hiring a property management company to re-rent the premises and that, to the date of the hearing, they have not been able to secure new tenants.
17. As the lease was not set to expire until 31 May 2019 and as the landlords were paid no rent between 01 January and that date, I find that their claim succeeds in the amount of \$3475.00.

Decision

18. The landlords claim for compensation for lost rental income succeeds in the amount of \$3475.00.

Issue 2: Late Fees - \$75.00

Relevant Submissions

19. The landlords have assessed late fees in the amount of \$75.00.

Analysis

20. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

21. The minister has prescribed the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

22. As the tenant has been in arrears since 02 January 2019, the landlords are entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

23. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Utilities - \$84.21

Relevant Submissions

24. The tenant canceled the electricity account in January 2019 and the account was placed back in landlord1's name and he was charged for the electricity usage after that date.

25. The landlords submitted 4 bills they had received from Newfoundland Power ([REDACTED] #3) showing that they were charged \$88.41 for the period from 24 January 2019 to 20 June 2019. They are seeking a payment of \$84.41 for the period ending 31 May 2019.

Analysis

26. The evidence and testimony submitted by the landlords shows that they were charged for the electricity used in the rental unit between 24 January and 20 June 2019.

27. For the same reasons outlined in section 1, above, I find that the tenant is responsible for the electricity charges for the period ending 31 May 2019.

28. I calculate that amount to be \$71.68 (\$18.00 for February 2019 + \$23.43 for March 2019 + \$22.78 for April 2019 and \$7.47 for May 2019 (\$24.20 ÷ 29 days = \$0.83 per day x 9 days = \$7.47)).

Analysis

29. The landlord's claim for a payment of utilities succeeds in the amount of \$71.68.

Issue 4: Security Deposit

30. The tenant had paid a security deposit of \$350.00 on 01 June 2018 and receipt of that deposit is acknowledged in the submitted rental agreement.
31. As the landlords' claim has been successful, they shall retain the security deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

32. The landlords paid a fee of \$20.00 to file this application. As their claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

33. The landlords are entitled to the following:

- a) Rent Owing\$3475.00
- b) Late Fees\$75.00
- c) Utilities\$71.68
- d) Hearing Expenses\$20.00
- e) LESS: Security Deposit(\$350.00)
- f) Total Owing to Landlord\$3291.68

08 November 2019

Date

John R. Cook
Residential Tenancies Tribunal