

Residential Tenancies Tribunal

Decision 19-0517-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 14 August 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 \$3900.00;
 - b. An order for a payment of \$140.00 for cleaning and garbage removal;
 - c. An order for a payment of \$20.00 for hearing expenses; and
 - d. Authorization to retain the \$800.00 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 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. 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 he has been properly served. The landlord testified that the tenant was served with notice of the hearing, by e-mail, on 05 July 2019 and she has had 39 days to provide a response. A copy of that e-mail was also submitted at the hearing and with his application the landlord included previous e-mail exchanges he had had with the tenant at that 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.

Issue 1: Rent - \$3900.00

Relevant Submissions

7. The landlord stated that he had initially entered into a rent-to-own agreement with the tenant in October 2016. She paid a deposit to the landlord at that time and a portion of the rent she was paying was intended to be credited towards the purchase price of the home.
8. The landlord stated that he and the tenant were not able to agree on a purchase price for the house and in October 2017 it was agreed that she would stay on at the unit as a tenant only and she entered into a rental agreement with the landlord at that time. A copy of that agreement was submitted at the hearing (█ #1).
9. The landlord stated that the initial deposit was returned to the tenant and she was granted free rent for the first 3 months of the tenancy in exchange for the money that was paid out in 2016 that was originally to be credited toward the purchase price of the home.
10. On 06 June 2019 the tenant sent a text-message to the landlord informing him that she was vacating the unit and that she would be moved out by 15 June 2019. The landlord stated that he started advertising the unit immediately and he was able to secure new tenants for July 2019. They moved in on 15 July 2019 and paid him a half month's rent for that month.
11. According to the submitted rental agreement, rent was set at \$1300.00 per month. The landlord also submitted rent records with his application (█ #3) and he pointed out that no rent was paid for April, May or June 2019. He is seeking a payment of \$3900.00 for those 3 months.

Analysis and Decision

12. I accept the landlord's claim that the tenant had not paid rent as required and I find that she owes him \$3900.00 for the months of April, May and June 2019.

Issue 2: Cleaning and Garbage Removal - \$140.00

Relevant Submissions

13. The landlord stated that after the tenant moved out he was required to spend a full day cleaning the rental unit. No photographs were submitted showing the condition of the unit.
14. He also stated that he was required to hire someone from the town of [REDACTED] to haul away some furniture, garbage and debris the tenant had left behind. No receipt was submitted at the hearing and the landlord did not indicate how much he was charged to have that work carried out.

Analysis

15. Very little evidence was presented at the hearing regarding this portion of the landlord's claim and even the landlord's testimony on these matters was scant. No photographs or videos were presented showing the condition of the unit and no receipts showing that the landlord had incurred any costs.
16. Accordingly, I reduce the amount of the award sought here to \$38.80 in compensation for 2 hours of his personal labour (\$19.40 per hour x 2 hours).

Decision

17. The landlord's claim for cleaning succeeds in the amount of \$38.80.

Issue 3: Security Deposit

18. The landlord stated that the tenant had paid a security deposit of \$800.00 on 10 August 2017 and receipt of that deposit is acknowledged in the submitted rental agreement.
19. The landlord also pointed to section 4.(k) of this rental agreement which reads: "The security deposit is non refundable if the tenant does not provide 45 days written and delivered notice to the landlord."
20. The landlord argued that as the tenant only gave him 9 days' notice, he is entitled to retain the security deposit.

Analysis

21. Section 3.(1) of the *Residential Tenancies Act, 2018* states:

Application of Act

3. (1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.

22. And section 14.(8) of the *Residential Tenancies Act, 2018* states:

(8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

23. The combined effect of these 2 sections is that, regardless of what the landlord and tenant may have agreed to in their lease, or elsewhere, the security deposit may only be disposed of in accordance with s. 14 of the Act.

24. Policy with this Section is that a landlord may make claim for the security deposit if he has incurred costs as a result of the tenant's breach of the rental agreement or of the Act. If no costs were incurred, then the landlord must return the deposit and he cannot retain it to merely penalize the tenant, regardless of any agreements he may have entered into with her.

25. The landlord has established that the tenant has not paid rent as required and, as such, he shall retain the deposit and apply it towards the outstanding arrears.

Decision

26. The landlord shall retain the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

27. The landlord paid a filing fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay that hearing expense.

Summary of Decision

28. The landlord is entitled to the following:

- a) Rent Owing\$3900.00
- b) Cleaning\$38.80
- c) Hearing Expenses\$20.00

- d) LESS: Security Deposit(\$800.00)

- e) Total Owing to Landlord\$3158.00

30 December 2019

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal