

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0521-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 11:10 a.m. on August 20, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

### **Issues before the Tribunal**

4. The tenant is seeking the following:
  - a. Refund of the security deposit.
5. The landlord is seeking the following:
  - a. Payment of rent in the amount of \$1230.00.

## **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 Sections 10, 14, 18, 19, 34 and 35 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 - \$1230.00**

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 tenant moved into a furnished unit on May 1, 2017 on a month to month tenancy with rent set at \$1650.00 per month due on the 1<sup>st</sup> of each month. The rent was paid through interac e-transfer and the rent was received each month up to the month of April 2019. The landlord is seeking to keep the security deposit as payment of rent for the month of May 2019. On May 3, 2019 the landlord received an e-mail from the tenant. The e-mail stated that the tenant has moved out and that in April the tenant had sent an e-mail to the landlord informing him that the tenant was moving out. He testified that he did not receive an e-mail from the tenant notifying him that the tenant was moving out. When the tenant moved out he had to clean the unit as the tenant smoked in the unit and he had a dog. Also all of the linens had to be washed. The ceiling in the kitchen had to be repaired as it was damaged due to a leak. This repair was completed in 3 days. He advertised the unit for rent on Kijiji the 3<sup>rd</sup> week of May 2019 and the unit was re-rented for June 1, 2019.
10. The landlord submitted into evidence a copy of the lease agreement (LL #1), a copy of the e-mail dated May 3, 2019 (LL #2), and photographs of the unit (LL #3).

#### Tenant Position

11. The tenant testified that he sent an e-mail to the landlord on April 1, 2019 that he was vacating on May 1, 2019. The e-mail did not quote a section of the Act. The termination notice was sent to the same e-mail address as he used to pay the rent. He said either the landlord didn't get the e-mail or he ignored it.

12. The tenant testified that there was a leak from the bathroom down to the kitchen that had to be repaired before the landlord could rent the place.

### **Analysis**

13. I have reviewed the testimony and evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find the tenancy was a month to month tenancy. The tenant sent an e-mail on April 1, 2019 that he was vacating on May 1, 2019. Section 18.(9)(c) of the Act states that the termination notice shall state the date, which shall be the last day of the rental period and section 34(d) requires the section of the Act under which the notice is given. The notice was served as required by section 35 of the Act. The termination notice given is not a valid notice because it didn't state the last day of the rental period nor did it state the section of the Act for which the notice was given. Section 10(1).4 states that a landlord is required to mitigate his losses when a tenant abandoned a unit. The landlord mitigated his losses in a timely fashion as the unit was re-rented for June 1, 2019. Further the landlord is seeking the amount of the security deposit as payment of rent for the month May 2019. As the termination notice is not a valid notice and the landlord mitigated his losses the claim for the payment of rent for the month of May succeeds in the amount of \$1230.00.

### **Decision**

14. The landlord's claim for rent for the month of May 2019 succeeds in the amount of \$1230.00.

### **Issue 2: Application for Security Deposit**

15. 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.

### **Tenant Position**

16. The tenant testified that a \$1230.00 security deposit was paid in April 2017.

### **Landlord Position**

17. The landlord acknowledges a \$1230.00 security deposit was paid in April 2017.

## Analysis

18. A security deposit was paid in April 2017. As the landlord has been successful in his claim for the payment of rent, he shall retain the \$1230.00 security deposit as outlined in this decision and order.

## Decision

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

## Summary of Decision

20. The landlord is entitled to the following:

- |  |                         |
|--|-------------------------|
| a) Payment of rent .....               | \$1230.00               |
| b) <b>LESS: Security deposit .....</b> | <b><u>(1230.00)</u></b> |
| c) <b>Total owing to Landlord.....</b> | <b><u>\$0</u></b>       |

December 13, 2019

Date

Residential Tenancies Section