

Residential Tenancies Tribunal

[REDACTED] Decision 19-0564-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:40 a.m. on August 27, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondents, [REDACTED], [REDACTED], [REDACTED] and [REDACTED], hereafter referred to as tenant1, tenant2, tenant3 and tenant4 respectively, did not attend the hearing.

Preliminary Matters

4. The tenants were not present or represented at the hearing. Prior to the hearing I called the number on file for the tenants but I was unable to reach them. This Tribunal's policy 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 the application for dispute resolution 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/she has been properly served.
5. The affidavit of service submitted by the landlord shows that the notice of this hearing was sent electronically to the tenants on July 17, 2019 and the tenants have had 40 days to provide a response. The landlord presented a copy of the text message along with a copy of the lease agreement which shows the cell phone number for the tenants. As the tenants were properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$2500.00;
 - b. Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
8. Also relevant and considered in this case are Sections 14, 18, 19, 31, 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 - \$2500.00

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

Landlord Position

10. The landlord testified that 4 tenants moved into the unit on August 1, 2018 for a one year term with rent set at \$1250.00 per month due on the 1st of each month. He only communicated with tenant1. On March 7, 2019 tenant1 sent a text message to him stating that they will be leaving at the end of April 2019 as they can provide a 2 month notice to end their lease early and that's what they will have to do. The message also stated that his roommate tenant4 has to travel home to take care of a sick family member. The landlord replied back and said that they are required to give a termination notice 2 months before the end of the term agreement. On April 28, 2019 the landlord received a text message stating that the tenants were moving out on April 30, 2019. On April 30, 2019 he received another text message stating that the house will be ready in 15 minutes. He then went to the house. When he entered the house everything was moved out and the house was clean.
11. The landlord further testified that the rent was paid through interac e-transfer and the last time he received rent was on March 26, 2019 in the amount of \$1250.00. On April 28, 2019 he started advertising the unit for rent on Kijiji. The unit was re-rented for July 1, 2019.
12. The landlord submitted a copy of the rental agreement (LL #1), a copy of the interac e-transfer dated March 26, 2019 (LL #3) and a list from Kijiji of the dates that the unit was advertised (LL #2).

Analysis

13. I have reviewed the testimony and evidence of the landlord and I have determined that there is one issue that needs to be addressed; is rent owing. I find the tenants signed a term agreement for the period August 1, 2018 to July 31, 2019. Tenant1 sent a text message to the landlord on March 7, 2019 stating they could end the lease early because another tenant had to leave to care for a sick family member. A copy of the text message was not presented into evidence. Section 18.(1)(c) requires a tenant to give a termination notice not less than 2 months before the end of the term where the residential premises is rented for a fixed term. Section 10(1).4 states that a landlord is required to mitigate his/her losses when a tenant abandoned a unit. A tenant is considered to have abandoned a unit when the tenancy is not terminated in accordance with the Act or the rental agreement as per section 31.(2)(b) of the Act. I also find that the landlord started advertising the unit for rent on April 28, 2019 and the unit was re-rented for July 1, 2019. As the tenants did not give a notice as required by the Act and the landlord mitigated his losses in a timely fashion, the claim for payment of rent for the months of May and June succeeds in the amount of \$2500.00; \$1250.00 for each month.

Decision

14. The landlord's claim for rent succeeds as per the following:

a. Rent owing for May 2019	\$1250.00
b. Rent owing for June 2019.....	<u>\$1250.00</u>
c. Total rent owing.....	\$2500.00

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.

Landlord Position

16. The landlord testified a \$937.50 security deposit was paid on June 7, 2018.

Analysis

17. A security deposit was paid in June 2018. As the landlord has been successful in his claim for the payment of rent, he shall retain the \$937.50 security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$20.00

19. 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

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

Analysis

21. 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 was successful, the tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00 for the application filing fee.

Decision

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

Summary of Decision

23. The landlord is entitled to the following:

a) Payment of rent	\$2500.00
b) Hearing expenses.....	<u>\$20.00</u>
c) LESS: Security deposit	<u>(\$937.50)</u>
d) Amount owing to landlord	\$1582.50

December 10, 2019

Date

Residential Tenancies Section