

Residential Tenancies Tribunal

Decision 19-0570-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 12 November 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.
3. The tenant, [REDACTED], hereinafter referred to as "the tenant", did not participate. His father, [REDACTED] ("[REDACTED]") participated in the hearing by teleconference.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1460.00;
 - b. An order for a payment of late fees in the amount of \$150.00;
 - c. Authorization to apply a credit of \$50.00cr; and
 - d. Authorization to retain the \$273.75 security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent - \$1460.00

Relevant Submissions

The Landlord's Position

6. The landlord stated that he had entered into a 6-month, fixed-term rental agreement with the tenant on 22 January 2019 and a copy of the executed lease was submitted at the hearing (█ #1). The agreed rent was set at \$365.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$273.75. The rent was to be paid to the landlord on the tenant's behalf by the Department of Advanced Education, Skills and Labour (AESL).
7. The landlord submitted rent records at the hearing (█ #3) showing the payments he had received from the tenant since January 2019. Those records show that the landlord had received a pro-rated rent for January 2019, and a full payment of rent for February and March 2019. No payments were made since.
8. The landlord stated that he posted a Notice of Abandonment on door to the rental unit (█ #2) on 15 May 2019 and he entered and took possession on the following day.
9. The landlord testified that after he took possession of the room, he began advertising the unit for rent on Facebook Marketplace and on Kijiji. He testified that he was unable to secure a new tenant until 01 September 2019.
10. The landlord argued that as the tenant had signed on for a 6-month lease that was not set to expire unit 31 July 2019 and as the tenant had not given him any notice that he was terminating that lease, the landlord is entitled to rent for the period from 01 April to 31 July 2019, a period of 4 months.

Tenant's Position

11. █ stated that although the tenant had moved some of his possessions into the unit, he never did reside at the unit. He stated that a treatment space opened up for the tenant in █ shortly after he signed the lease and he moved there in the early part of 2019.
12. █ testified that the tenant did wish to return to the rental unit after he completed his treatment and he had received assurances from AESL that they would continue to pay his rent while he was in █. He stated that he does not know why AESL stopped paying that rent and suggested that the Board contact that agency for answers.

Analysis

13. The submitted rental agreement shows that the tenant had entered into a 6-month lease that was not set to expire until 31 July 2019 and the tenant could not terminate the rental agreement until that date.
14. As the landlord received no rent for April 2019 and as the tenant was no longer residing at the unit, 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 landlord, including a loss of rental income, as a result of that abandonment.
15. I accept the landlord's claim that he had mitigated his damages by advertising the unit for rent after he had regained possession of the property in May 2019 and I also accept his claim that he did not secure a new tenant until 01 September 2019.
16. As the lease was not set to expire until 31 July 2019 and as the landlord was paid no rent between 01 April 2019 and that date, I find that the landlord is entitled to compensation for lost rental income for those 4 months.

Decision

17. The landlords claim for compensation for lost rental income succeeds in the amount of \$1460.00 (4 months x \$365.00 per month).

Issue 2: Late Fees - \$150.00

Relevant Submissions

18. The landlord has assessed late fees in the amount of \$150.00.

Analysis

19. 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.

20. 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.

21. As the tenant has been in arrears since 02 April 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: "Other" Expenses - \$50.00cr

Relevant Submissions

23. The landlord submitted a copy of text-message exchanges he had had with the tenant's mother since May 2019 (█ #4).

24. According to those text-messages, on 30 May 2019 the landlord informed the tenant's mother that the tenant had left behind some items in his room, including a dresser. The tenant's mother did not want to retrieve the dresser and the messages show that there was an agreement between them that the landlord would "keep the dresser for my a small portion of my lost rent".

25. The landlord is seeking to reduce the rent owing by \$50.00 in exchange for the dresser that was left in the tenant's room.

Analysis

26. The tenant's dresser was abandoned by him and the landlord is still in possession of it. The tenant has made no effort to retrieve that dresser and the landlord's evidence shows that the tenant's mother was willing to exchange it for a small portion of rent. There was no evidence presented at the hearing showing what was meant by a "small portion", but I think \$50.00 is fair.

Decision

27. The landlord shall reduce the rent owing by \$50.00 in exchange for the abandoned dresser.

Issue 4: Security Deposit

28. The landlord stated that the tenant had paid a security deposit of \$273.75 on 29 January 2019 and receipt of that deposit is acknowledged in the submitted rental

agreement. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

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

Summary of Decision

30. The landlord is entitled to the following:

- a) Rent Owing\$1460.00
- b) Late Fees\$75.00
- c) Hearing Expenses.....\$20.00

- d) LESS: Dresser (\$50.00)
- e) LESS: Security Deposit..... (\$273.75)

- f) Total Owing to Landlord\$1231.25

13 April 2020

Date

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