

## **Residential Tenancies Tribunal**

Decision 19-0706-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 11:20 a.m. on November 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 respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing.

### **Preliminary Matter**

4. The tenant paid a \$400.00 security deposit. This matter was dealt with in Order [REDACTED].

### **Issues before the Tribunal**

5. The landlord is seeking the following:
  - a. Payment of rent in the amount of \$550.00;
  - b. Payment of late fees in the amount of \$17.00;
  - c. Compensation for inconveniences in the amount of \$500.00;
  - d. Compensation for damages in the amount of \$775.00;
  - e. Loss of income in the amount of \$3657.00;
  - f. Hearing expenses.

### **Legislation and Policy**

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2000 (the Act), Section 41.

7. Also relevant and considered in this case are Sections 8, 13, 17 and 18 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 - \$550.00**

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 rented a room in the unit for a 12 month period beginning September 6, 2017. The rent was set at \$550.00 per month due on the 1<sup>st</sup> of each month. In June 2018 he sent the tenant an e-mail that he was increasing the rent. The tenant didn't like it. She sent a termination notice by e-mail that she was moving out of the unit. He is not sure of the date that the notice was given. The tenant never gave him a written termination notice. He showed her room on July 9, 12, 16 and 20, 2018. The tenant moved out the end of August 2018 and the unit was not re-rented until October 2018.
10. The landlord presented copies of e-mails that he sent to the tenant informing her of the dates he was showing her room (LL #1).

#### Tenant Position

11. The tenant testified that on June 5, 2018 she received an e-mail from the landlord informing her that the rent was going to increase. She replied to the e-mail right away and the landlord didn't reply until June 17, 2018. On July 23, 2018 she sent an e-mail to the landlord stating that she was vacating the end of August 2018. She moved out of the unit on August 30, 2018.
12. The tenant testified that about a week after she moved out she went to the unit to return something to another person living in the unit. That person living in the unit told her that her room has been rented.

#### **Analysis**

13. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the rent for the month of September 2018. The landlord did not rent this unit as one unit. He rented the rooms individually. Even though the tenant did not give a written termination notice as required by section 17.(10) of the Act the e-mails the landlord presented indicated that he only advertised and showed the tenant's room in July 2018 to perspective tenants.

The tenant's testimony is more credible that the room was rented for September 2018 as the landlord failed to show he advertised in August which leads me to believe he had secured a tenant for September 2018. The claim for payment of rent fails.

### **Decision**

14. The landlord's claim for payment of rent fails.

### **Issue 2: Late fees - \$17.00**

#### Landlord Position

15. The landlord said that the tenant did not pay the rent for August 2018 until August 9, 2018. He is claiming \$17.00 for late fees. The landlord presented a copy of the list of interac e-transfers he received from the tenant for the period April – August 2018 (LL #7).

#### Tenant Position

16. The tenant testified that when she moved into the unit she gave the landlord postdated cheques. During the tenancy she started to pay the rent through interac e-transfer and the landlord did not return the postdated cheques. She said she didn't pay the rent for August 2018 until the landlord returned the postdated cheques.

### **Analysis**

17. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the late fees. The tenant did not pay the rent for August 2018 until August 9, 2018. Under section 13 of the Act, the landlord can charge a late fee. The *Residential Tenancies Regulations, 2000* allows for a late fee of \$5.00 for the 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent for August 2018 was not paid until August 9, 2018, the claim for late fees succeeds in the amount of \$17.00.

### **Decision**

18. The landlord's claim for late fees succeeds in the amount of \$17.00.

### **Issue 3: Compensation for inconveniences - \$500.00**

#### Landlord Position

19. The landlord testified that he showed the unit 5 times during July 2018. He spent 2 hours at each showing between making the arrangements, his time going to and from the unit and the time spent in the unit. He is claiming \$100.00 for each viewing. He said that he was going to have his worker show the unit but the tenant refused.

#### Tenant Position

20. The tenant testified that she never refused him to show the unit.

#### **Analysis**

21. I have reviewed the testimony and the evidence of the landlord and the tenant. I find that there is one issue that needs to be addressed; is the tenant responsible for the compensation for inconveniences. The landlord made arrangement to show the unit at least 4 times during July 2018. The costs the landlord is claiming for his time would be a normal cost associated with carrying out of his business. The claim for compensation for inconveniences fails.

#### **Decision**

22. The claim for compensation for inconveniences fails.

### **Issue 4: Compensation for damages - \$775.00**

#### Landlord Position

23. The landlord testified that when the tenant moved out the stove was dirty and the cupboard she used was dirty. The empty cupboard was dirty and there were 3 other people living in the unit at that time. He paid \$75.00 to have the stove cleaned and \$50.00 to have the cupboard cleaned. He does not have a receipt for the work.
24. The landlord testified that he bought new night stands in October 2017. When the tenant was unpacking the night stand from the box she used a knife and she damaged the night stand. He does not have it repaired but he assumes it will cost \$100.00 for the repair.
25. The landlord testified that the tenant put tape on the living room ceiling. When she removed the tape, the drywall came off. The ceiling is not repaired as of

the date of the hearing. He received an estimate in the amount of \$450.00 from Rex Contracting. The unit was built in 2017.

26. The landlord testified that he gave the tenant oil to put on the door hinges. When she put the oil on the hinge for the door going to the bathroom she used too much oil. It left a black mark on the door. The door has not been painted and he estimates it will cost \$100.00 to have the door painted.
27. The landlord submitted into evidence photographs of the stove and cabinets (LL #2), the night stand (LL #3), the ceiling (LL #4) and the door (LL #6). The photographs of the cabinets are very close up. The photographs of the ceiling are a very poor quality. He also submitted an estimate from Rex Contracting in the amount of \$450.00 to plaster the repair and repaint the ceiling (LL #5).

#### Tenant Position

28. The tenant testified that she cleaned before she moved out of the unit. She said that the photographs of the cupboards were so close she could not tell if they were the cupboards she used.
29. The tenant testified that her and her roommate opened the package for the night stand. When they opened the package the night stand was scratched. She testified that during the tenancy her roommates had a surprise birthday party for her. They put tape on the ceiling. Just before she moved out she removed the tape. There were no marks on the ceiling after she removed the tape.
30. The tenant testified that she never saw black marks on her door before she moved out. She said she does not know if the photograph of the door is the door in her room.
31. The tenant presented a USB containing photographs of the ceiling in the living room (T #1).

#### **Analysis**

32. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the damages. The burden of proof lies with the landlord to establish, that the damage exists, and that the tenant is responsible for the cost of repairs. The tenants living in the unit shared the kitchen and the living room. I find that the landlord did not present any evidence to show that the tenant was responsible for the dirty stove and the cupboards and that she caused damage to the night stand. As a result the claim for cleaning and the repairs to the night stand fails.

33. With regard to the painting of the ceiling. The photographs the landlord presented are very poor quality and you cannot tell the condition of the ceiling. Therefore, the claim for painting fails.
34. With regard to the painting of the door. I find that there are a couple of small black marks on a door. However, the landlord did not present any evidence to show where the door was located or the cost of repairs. The claim for painting of the door fails.

### **Decision**

35. The landlord's claim for damages fails.

### **Issue 5: Loss of income - \$3657.00**

#### Landlord Position

36. The landlord testified that in July 2018 he rented a room in the unit as an Airbnb and the room was booked to be rented for 27 days in August 2018. The guest who went to stay there in July 2018 didn't stay there because of the tenant. The tenant was making the guest uncomfortable. The guest then put a damaging review of him on the internet and the person who was going to rent the room for August 2018 decided not to take the room. He was charging \$1257.00 for the room for the month of August 2018.
37. The landlord submitted a copy of the review from [REDACTED], the guest who was going to rent the room in July 2018 along with a conversation with a gentleman through the Airbnb website who was making arrangements for his friend to rent the room for August 2018 (LL #8).
38. The landlord testified that he had 2 tenants in the basement unit each renting a room. Both of them were forced to move out because of the noise the tenant was making. First he said he was seeking rent for June and July 2018 at a rate of \$600.00 per month per room. Then he was seeking rent for August and September 2018 and then he was seeking rent for September and October 2018.
39. The landlord submitted copies of text messages between himself and the 2 tenants living in the basement unit (LL #10 & 11).

#### Tenant Position

40. The tenant testified that the guest who rented the room in July told her that the sheets were not clean. The guest asked her if they knew she was coming. The

tenant replied no. The guest didn't want to stay because she was interfering with their privacy.

41. The tenant testified that they had a problem with one of the tenant's living in the basement unit. He would be shouting and insulting them. She acknowledges that on one occasion the landlord called about the noise. She wasn't home the night that the landlord called.

### **Analysis**

42. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the loss of income. Based on the conversation the landlord had with a gentleman through the Airbnb website, the reason the person didn't rent the room for August was that she found a place closer to MUN. The claim for loss income for the Airbnb fails.
43. With regard to the loss of income from the downstairs rooms. The landlord did not present any evidence that he received termination notices under section 22 of the Act nor that the tenant was interfering with the peaceful enjoyment of the tenants living in the basement unit. Also the landlord was very confused on what months he was seeking rent to cover for loss income. The claim for loss income for the 2 rooms in the basement unit fails.

### **Decision**

44. The landlord's claim for loss income fails.

### **Issue 6: Hearing Expenses - \$20.00**

45. 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**

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

### **Analysis**

47. 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 has been partially successful, the tenant shall pay the landlord's hearing expenses in the amount of \$20.00.

### **Decision**

48. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

### **Summary of Decision**

49. The landlord is entitled to the following:

a) Payment of late fees .....	\$17.00
b) Hearing expenses .....	<u>\$20.00</u>
c) <b>Total owing to the Landlord .....</b>	<b><u>\$37.00</u></b>

May 7, 2020

Date

Residential Tenancies Section