

Residential Tenancies Tribunal

[REDACTED] Decision 19-0734-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:05 p.m. on October 9, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], represented by [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 Matters

4. The landlord discontinued the claim for vacant possession and amended the claim for payment of rent from \$750.00 to \$897.96 up to October 6, 2019.

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$897.96;
 - b. Hearing expenses.

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 14 and 19 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 - \$897.96

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 the unit 10 years ago on a month to month tenancy with rent due on the 1st of each month. The current rate of rent is set at \$750.00 per month. The tenant paid the rent through interac e-transfer and the rent was paid up to August 2019. He testified that a termination notice was served on the tenant on September 13, 2019 to vacate on September 24, 2019 because they had not received the rent for the month of September 2019.
10. Later in the hearing after the tenant testified that he has not been at the unit since October 6, 2019, the landlord stated he is seeking rent up to October 6, 2019.

Tenant Position

11. The tenant acknowledges he has not paid the rent for the month of September 2019. He testified that the last time he was at the unit was on October 6, 2019 but he still has the key to the unit along with some belongings left in the unit. He stated he does not want the items that he left in the unit.

Analysis

14. 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 that the last time the tenant paid rent was for August 2019. The landlord served a termination notice to vacate on September 24, 2019. The tenant did not move on that date. He has not been at the unit since October 6, 2019. The claim for payment of rent succeeds in the amount of \$750.00 for September 2019 and \$147.96 ($\$750.00 \times 12 \text{ months} = \$9000.00 \div 365 \text{ days} = \$24.66 \text{ per day} \times 6 \text{ days} = \147.96) for October 1 – 6, 2019 for a total of \$897.96 ($\$750.00 + \$147.96 = \897.96)

Decision

15. The landlord's claim for rent succeeds in the amount of \$897.96.

Issue 2: Application for Security Deposit

16. 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

17. The landlord testified a \$600.00 security deposit was paid in October 2009.

Tenant Position

18. The tenant acknowledges he paid a \$600.00 security deposit in October 2009.

Analysis

19. \$600.00 was paid in October 2009 for a security deposit. Under section 14.1(b) a landlord shall not demand more than $\frac{3}{4}$'s of a month's rent for the security deposit. As the rent is \$750.00 per month, the maximum amount the landlord could have collected for the security deposit was \$562.50 ($\$750.00 \times 75\% = \562.50). The landlord collected \$37.50 ($\$600.00 - \$562.50 = \37.50) more than is permitted. The overpayment shall be applied towards the rent along with the \$562.50 security deposit.

Decision

20. The landlord shall retain the \$562.50 security deposit and the overpayment of \$37.50 for the outstanding rent as outlined in this decision and attached order.

Issue 2: Hearing Expenses - \$20.00

21. 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

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

Analysis

23. 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 is successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

24. The tenant shall pay the landlord's hearing expenses in the amount of \$20.00.

Summary of Decision

25. The landlord is entitled to the following:

- a) Payment of rent\$897.96
- b) Hearing expenses\$20.00
- c) **Less the security deposit**(562.50)
- d) **Less the overpayment on the security deposit**(37.50)
- e) **Total owing to the landlord**\$317.96

October 24, 2019

Date

Residential Tenancies Section