

Residential Tenancies Tribunal

Decision 19-811-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on November 20, 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] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, did not attend the hearing.

Preliminary Matter:

4. The claim for compensation for inconveniences should read compensation for damages.
5. The tenants were not present or represented at the hearing. Prior to the hearing I called 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.

6. The affidavits of service submitted by the landlord show that the notice of the hearing was electronically served on tenant1 on October 21, 2019 and on tenant2 on October 23, 2019. The landlord submitted copies of the e-mails dated October 21 and 23, 2019 along with a copy of the lease agreement (LL #1). The lease agreement contains tenant1's e-mail address. The e-mail address for tenant2 was provided by tenant1 on October 22, 2019. 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

7. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$3300.00;
 - b. Payment of utilities in the amount of \$52.27;
 - c. Compensation for damages in the amount of \$425.00;
 - d. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 10, 14, 18, 19 and 31 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 - \$3300.00

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

Landlord Position

11. The landlord testified that the tenants moved into the unit the last week of January 2019 for a 6 month term tenancy to start on February 1, 2019 with rent set at \$1100.00 per month due on the 1st of each month. The rent was paid up to June 2019. The last payment received was on July 12, 2019 in the amount of \$200.00. This covered the balance of rent owing for June 2019.
12. On August 29, 2019 when the landlord went to the downstairs unit, the tenant living in that unit told him that the upstairs tenants moved out the end of July 2019. He then posted a termination notice under section 19 of the *Residential*

Tenancies Act to vacate on September 2, 2019. That same day he posted a 'Notice to Enter' the property on August 30, 2019. When he entered the property on August 30, 2019 the tenants' belongings were gone.

13. The landlord testified that he posted an ad on Kijiji on September 5, 2019. The unit was re-rented the 2nd or 3rd week of September 2019 for October 1, 2019.
14. The landlord submitted into evidence a copy of the termination notice (LL #3), a copy of the Notice to Enter (LL #4) and a copy of the rent ledger (LL #5).

Analysis

15. I have reviewed the testimony and evidence of the landlord. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the last time the landlord received rent was on July 12, 2019. This covered the balance for June 2019. I also find that the tenants had a six month term agreement to end on July 31, 2019. The tenants did not give a termination notice and the landlord did not discover until August 30, 2019 that the tenants had vacated the unit. Under section 18.(1)(c) a tenant is required to give a notice not less than 2 months before the end of the tenancy if they want to move out when the term is up. As the tenants did not give a termination notice to vacate and the landlord did not discover until August 30, 2019 that the tenants had vacated the unit, the claim for payment of rent for the months of July and August 2019 succeeds in the amount of \$1100.00 for each month for a total of \$2200.00 (\$1100.00 x 2 months = \$2200.00).
16. Under section 31.(2) a tenant is considered to have abandoned the unit if the rental agreement is not terminated in accordance with this Act or the rental agreement. The tenants did not terminate the tenancy as required by the Act. Under section 10.(1)(4) the landlord is required to mitigate his losses when a tenant is considered to have abandoned the unit. The landlord tried to mitigate his losses in a timely matter as he had the unit re-rented the 2nd or 3rd week of September for October 2019. As the landlord mitigated his losses the claim for payment of rent for the month of September succeeds in the amount of \$1100.00.

Decision

17. The landlord's claim for rent succeeds in the amount of \$2088.00.
 - a) Rent owing for July 2019.....\$1100.00
 - b) Rent owing for August 2019.....\$1100.00
 - c) Rent owing for September 2019.....\$1100.00
 - d) **Total owing to the Landlord****\$3300.00**

Issue 2: Payment of utilities - \$52.27

18. The landlord testified that the tenants were responsible for their own utilities as per the rental agreement. The tenants had the power bill taken out of their name on September 11, 2019. The cost of the power for the period September 11 – 18, 2019 is \$13.02 and for the period September 18, 2019 – October 1, 2019 is \$39.77 for a total of \$52.27. The landlord submitted a copy of the two Newfoundland Power bills (LL #8).

Analysis

19. I find that the tenants were responsible for their own utilities and they had the power taken out of their name on September 11, 2019. As the landlord was awarded rent for the month of September as outlined in no. 17 above, the claim for the payment of the power bill succeeds in the amount of \$52.27.

Decision

20. The landlord's claim for payment of the power bill succeeds in the amount of \$52.27.

Issue 3: Compensation for damages - \$425.00

21. The landlord testified that the unit needed to be cleaned when the tenants vacated. Also the tenants left garbage inside the house and there was a smell in the unit and stains on the floor from the garbage. He paid his sister \$200.00 to clean the unit. She spent 8 hours cleaning. She had to clean the kitchen, 2 bathrooms, the floors and the walls. She had to use baking soda to get rid of the smell. He said that his sister told him that there was cat urine in a couple of places in the basement.
22. The landlord testified that the tenant left 10 bags of garbage, a couple of boxes of miscellaneous items and a couch. He spent 4 hours (at a cost of \$125.00) between removing these items and bringing them to the dump. He said that he did not receive permission from Residential Tenancies to dispose of the couch.
23. The landlord testified that the tenants were responsible for the lawn care. It took him 4 hour to the mow the front and back lawns because the grass was high. He is claiming \$100.00.
24. The landlord submitted into evidence a photograph of the garbage and the couch (LL #4) and a photograph of the lawn (LL #5).

Analysis

25. I have reviewed the testimony and the evidence of the landlord. I have determined that there is one issue that needs to be addressed; are the tenants responsible for the damages. I find that the landlord did not present any evidence to establish that the unit needed to be cleaned and that he paid \$200.00 to have the unit cleaned.
26. With regard to disposal of items left behind. Under section 32, the landlord is required to make an application to the director to seek permission to dispose of items left behind. The landlord did not apply for permission to dispose of the couch and the boxes of miscellaneous items that were left behind. Based on the photographs of the bags of garbage left inside of the unit, these bags of garbage could have been put to the curb side for regular garbage pickup.
27. With regard to the mowing of the lawn. I find that the tenants were responsible for the lawn care. Based on the photograph presented, I find that the lawn needed to be mowed and the amount of time the landlord is claiming is reasonable. When a landlord does the work himself the landlord can charge for his own labour. The rate set by Residential Tenancies Section is \$19.40 per hour. Therefore, the claim for lawn care succeeds in the amount of \$77.60 (\$19.40 x 4 hours = \$77.60).

Decision

28. The landlord's claim for damages succeeds as per the following:

- a) Lawn care\$77.60

Issue 4: Application for Security Deposit

29. 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

30. The landlord testified that the tenants paid a \$700.00 security deposit on January 12, 2019.

Analysis

31. A \$700.00 security deposit was paid in January 2019. The landlord shall retain the security deposit as he has been successful in the claim for the payment of rent and utilities. The interest rate on security deposits for 2019 is 0%.

Decision

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

Issue 5: Hearing Expenses - \$20.00

33. 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

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

Analysis

35. 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 partially successful, the tenants are responsible to pay the landlord's hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

37. The landlord is entitled to the following:

a) Payment of rent.....	\$3300.00
b) Payment of utilities	\$52.27
c) Compensation for damages	\$77.60
d) Hearing expenses	\$20.00
e) Less the security deposit	<u>(700.00)</u>
f) Total owing to the Landlord	<u>\$2749.87</u>

April 23, 2020

Date

Residential Tenancies Section