

Residential Tenancies Tribunal

Decision 19-0942-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:05 a.m. on January 27, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The originating applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The countering applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The countering applicant, [REDACTED], hereafter referred to as landlord1, did not attend the hearing but she was represented by [REDACTED].

Issues before the Tribunal

4. The tenant is seeking the following:
 - a. Refund of the security deposit in the amount of \$575.00.
5. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$1150.00;
 - 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, 18, 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 - \$1150.00

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 on November 23, 2019 the tenant agreed to rent the unit beginning December 1, 2019 with rent set at \$1150.00 per month due on the 1st of each month and pay your own utilities. On November 28, 2019 the tenant contacted him by a text message re: picking up the key for the unit. He replied by saying that he would not be giving her the key to the unit until she had the power converted to her name. Later that evening she sent him another text message stating that she would not be taking the unit.
10. The landlord testified that the next day he posted an ad on Kijiji, NL Classifieds and Facebook Marketplace. The unit was re-rented the middle of December 2019 for the tenancy to start on January 1, 2020.

Tenant Position

11. The tenant testified that on November 23, 2019 she agreed to rent the unit for December 1, 2019 and she would be responsible for her own utilities. At that time the landlord told her that he would contact her Wednesday or Thursday about the keys. On Thursday, November 28, 2019 she never heard from the landlord so she contacted him by a text message. When she contacted him he replied by a text message. The message stated that he would not be giving her the key to the unit until she had the power converted to her name. She stated that the landlord never mentioned this issue to her when she agreed to rent the unit. By doing this he changed the condition of the contract. That same day she sent a text message to the landlord telling him that she would not be moving into the unit on December 1, 2019.

Analysis

12. 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 payment of rent for the month of December 2019. I find that the landlord and the tenant had a verbal agreement for the tenancy to start on December 1, 2019 with the tenant responsible for her own utilities. On November 28, 2019 the tenant sent a text message to the landlord stating she

would not be moving into the unit. Under section 18.(1) (b) the tenant is required to give a termination notice not less than one month before the end of a rental period. The tenant did not terminate the tenancy as required by section 18.(1)(b). Under section 10.(1)(4) the landlord is required to mitigate his/her losses if the tenancy is not terminated in accordance with the Act. I find that the landlord mitigated his losses in a timely fashion as he had the unit re-rented the middle of December 2019 for the tenancy to start on January 1, 2020. Therefore, the tenant would be responsible for the payment of rent for the month of December 2019.

Decision

13. The landlords' claim for rent succeeds as per the following:
 - a. Rent owing for December 2019\$1150.00

Issue 2: Application for Security Deposit

14. 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.

Tenant Position

15. The tenant testified that she paid a \$575.00 security deposit on November 23, 2019.

Landlord Position

16. The landlord acknowledges the tenant paid a \$575.00 security deposit.

Analysis

17. A \$575.00 security deposit was paid in November 2019. The landlords shall retain the security deposit as the landlords have been successful in the claim for the payment of rent. The interest rate on security deposits for the period 2019 - 2020 is 0%.

Decision

18. The security deposit shall be disposed of as outlined in this decision and attached order.

Issue 3: 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 landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

21. The cost the landlords 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 landlords' claim has been successful, the tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Decision

22. The landlords' claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

23. The landlords are entitled to the following:

a. Payment of rent	\$1150.00
b. Hearing expenses.....	\$20.00
c. Less the security deposit.....	<u>(575.00)</u>
d. Total owing to the landlords.....	\$595.00

May 19, 2020

Date

Residential Tenancies Section