

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0974-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 11:05 a.m. on January 13, 2020 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 by a conference call. The applicant, [REDACTED], hereafter referred to as landlord1, did not participate in the hearing. He was represented by [REDACTED]  
[REDACTED].
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing.

### **Preliminary Matter**

4. The landlord discontinued the claim for vacant possession as the tenant vacated on December 31, 2019.

### **Issues before the Tribunal**

5. The landlords are seeking the following:
  - a. Payment of rent in the amount of \$1350.00;
  - b. Late fees in the amount of \$75.00;
  - c. 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, 15 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 - \$1350.00**

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 moved into the unit on December 28, 2016 for a one year term to begin on January 1, 2017 with rent set at \$1250.00 per month. \$625.00 would be due on the 1<sup>st</sup> and 15<sup>th</sup> of each month. When the term expired, the tenancy converted to month to month. She testified that they received rent up to November 2019 except for \$100.00 the tenant deducted in April 2019 for paint. In April she agreed for the tenant to deduct \$100.00 from the rent to purchase paint to paint the unit. The tenant did not provide a receipt for the paint nor did she paint.
10. The landlord testified that they did not receive any monies for the rent for December 2019. On December 20, 2019 she sent a termination notice to the tenant by e-mail and by a text message. She also sent a copy to her representative to serve on the tenant. The termination notice was served under section 19 (failure to pay rent) with an effective date of December 31, 2019. The tenant vacated on December 31, 2019.
11. The representative testified that she served a copy of the termination notice to the tenant by leaving it with the lady that answered the door. After the tenant gave her testimony the representative testified that the tenant did not leave paint downstairs. The only paint that was downstairs was the paint that was in the unit at the start of the tenancy.

#### Tenant Position

12. The tenant testified that she purchased paint back in April 2019. She left the paint downstairs. She has a receipt for the paint but she couldn't find it to bring to the hearing. The tenant acknowledges that the rent was not paid for December 2019 and she vacated on December 31, 2019. She went back to the unit on January 5, 2020 to clean.

## **Analysis**

13. I have reviewed the testimony and evidence of the landlord, the representative and the tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the landlord gave the tenant permission to deduct \$100.00 from the rent in April 2019 for paint. The tenant did not paint the unit nor did she present a receipt for the purchase of the paint. As a result the claim for the payment of rent in the amount of \$100.00 for April 2019 succeeds.
14. I also find that the tenant acknowledges that the rent for December 2019 was not paid. The landlords gave her a termination notice to vacate on December 31, 2019 and the tenant vacated on that date. As December's rent was not paid and the tenant vacated on the termination notice, the landlords' claim for the payment of rent for the month of December 2019 succeeds in the amount of \$1250.00.

## **Decision**

15. The landlords' claim for rent succeeds as per the following:

a. Rent owing for April 2019.....	\$100.00
b. Rent owing for December 2019.....	<u>\$1250.00</u>
c. Total rent owing .....	\$1350.00

## **Issue 2: Late fees - \$75.00**

### Landlord Position

16. The landlord testified they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since December 2019.

### Tenant Position

17. The tenant testified that she feels that she should not have to pay the late fees as she explained to the landlords her situation.

## **Analysis**

18. The rental arrears has been established in paragraph 15 above. The *Residential Tenancies Regulations, 2018* 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 has been in arrears since December 2019 the late fees have exceeded the maximum amount of \$75.00.

## **Decision**

19. The landlords' claim for late fees succeeds in the amount of \$75.00.

### **Issue 3: Application for Security Deposit**

20. 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

21. The tenant testified that she paid a \$600.00 security deposit on December 28, 2016.

#### Landlord Position

22. The landlord acknowledges a \$600.00 security deposit was paid in December 2016.

## **Analysis**

23. A security deposit was paid in December 2019. As the landlords have been successful in the claim for the payment of rent and late fees, they shall retain the \$600.00 security deposit as outlined in this decision and order. The interest rate on security deposits for the period 2016 – 2019 is 0%.

## **Decision**

24. The landlords shall retain the security deposit as outlined in this decision and attached order.

### **Issue 4: Hearing Expenses - \$64.30**

25. 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

26. The landlords paid an application filing fee in the amount of \$20.00. They also paid \$44.30 to develop photographs. The landlords are seeking these costs.

### **Analysis**

27. The costs the landlords incurred to make the application and to have photographs developed are considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. However, the landlord did not present any photographs at the hearing. Since the landlord did not present any photographs, the claim for development of the photographs fails. As the landlords' claim for the payment of rent and late fees was successful, the tenant is responsible to pay the landlord's hearing expenses in the amount of \$20.00.

### **Decision**

28. The tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

### **Summary of Decision**

29. The landlords are entitled to the following:

a) Payment of rent.....	\$1350.00
b) Late fees .....	\$75.00
c) Hearing expenses .....	<u>\$20.00</u>
d) <b>LESS: Security deposit .....</b>	<b><u>(600.00)</u></b>
e) <b>Total owing to the Landlords .....</b>	<b><u>\$845.00</u></b>

May 7, 2020

Date

Residential Tenancies Section