

Residential Tenancies Tribunal

Decision 20-0004-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:10 a.m. on July 21, 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 through a conference call.
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing through a conference call.

Preliminary Matters

4. There was no affidavit on file but the tenant acknowledges that she was served with the application for dispute resolution in early January 2020 for a hearing scheduled for late January 2020. That hearing was postponed. She also acknowledges that she was served with the notice of rescheduled hearing on July 6, 2020 for this hearing.
5. The landlord amended the claim for payment of utilities from \$300.00 to \$276.00.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$2000.00;
 - b. Payment of utilities in the amount of \$276.00;
 - c. Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
8. Also relevant and considered in this case are Sections 10, 14, 19, 31, and 34 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 - \$2000.00

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

Landlord Position

10. The landlord testified that the tenant moved into the unit on December 1, 2019 for a one year term with rent set at \$900.00 per month due on the 1st of each month. The rent would increase to \$1100.00 on February 1, 2020. She said that they did not sign a lease but she sent a text message to the tenant on November 27, 2019. The message stated that the agreement would start on December 1, 2019 and end in November 2020 with rent set at \$900.00 for December 2019 and January 2020 and \$1100.00 for the period February – November 2020. The tenant responded to the text message by stating yes, perfect.
11. The landlord testified that when she received the text message from the tenant stating the tenant was moving out she advertised right away on Kijiji. The tenant vacated on December 30, 2019. The unit was re-rented for March 1, 2020.

Tenant Position

12. The tenant testified that she did not sign a lease but she acknowledges she received the text message and she replied to the text message. She said the landlord did not provide a copy of the Residential Tenancies Act.
13. The tenant testified that she sent a text message to the landlord on December 15, 2019 stating she was vacating the unit the end of December 2019. The notice did not quote a section of the Act. She vacated on December 30, 2019.
14. The tenant testified that after she vacated she would check the ads on Kijiji and NL Classifieds to see if the unit was advertised. She had never seen the unit

advertised but around the middle of February 2020 when she was driving by the unit she noticed that it was re-rented. She could see furniture in the unit.

Analysis

15. 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 landlord and tenant had a verbal one year agreement in place. Rent was set at \$900.00 for the first two months and \$1100.00 for the remainder of the term. Under section 16(1)(b) a landlord cannot increase rent during a term agreement.
16. The tenant acknowledges that when she sent the text message to the landlord stating she was terminating the tenancy she did not quote a section of the Act giving the reason why she was terminating as required by Section 34. As there was no reason given the termination notice is not a valid notice. Under section 31.1(1) a tenant is considered to have abandoned the unit if the rental agreement is not terminated in accordance with the Act or the rental agreement. If a tenant abandons a unit the landlord is required to mitigate his/her losses as required by section 10.1(4).
17. As the termination notice is not a valid notice, the tenant would be responsible for rent. However, the landlord did not present any evidence to establish that she tried to mitigate her losses in a timely manner. As a result, the claim for payment of rent fails.

Decision

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

Issue 2: Payment of Utilities - \$276.00

Landlord Position

19. The landlord testified that the tenant was responsible for the power in the unit. The cost of the power was \$163.00 for January 2020 and \$113.00 for February 2020. She did not submit copies of the power bills.

Tenant Position

20. The tenant testified that she was responsible for her own power but she disagrees with the claim as she did not live in the unit during the months of January and February 2020.

Analysis

21. 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 the power bills. I find that when the tenant agreed to rent the unit she was responsible for the cost of the power. Even though the tenant would be responsible for the cost of the power, the claim fails as the landlord was unsuccessful in the claim for the payment of rent.

Decision

22. The landlord's claim for payment of the power bills fails.

Issue 3: Application for Security Deposit

23. 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

24. The landlord testified a \$550.00 security deposit was paid on November 27, 2019.

Tenant Position

25. The tenant testified that she paid a \$550.00 security deposit in November 2019.

Analysis

26. A security deposit was paid in November 2019. As the landlord has been unsuccessful in the claim for the payment of rent and utilities, the landlord shall return the security deposit to the tenant as outlined in this decision and order.

Decision

27. The landlord shall return the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

28. 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

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

Analysis

30. 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 unsuccessful, the claim for hearing expenses fails.

Decision

31. The landlord's claim for hearing expenses fails.

Summary of Decision

32. The tenant is entitled to the following:

a) Refund of the security deposit.....\$550.00

July 27, 2020

Date

[REDACTED]
Residential Tenancies Section