

Residential Tenancies Tribunal

Decision 20-0059-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 25 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. A determination of the validity of a termination notice,
 - b. An order for a payment of rent in the amount of \$1911.21; and
 - c. Authorization to retain the security deposit of \$565.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 18 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from

the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where a respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord submitted an affidavit with his application stating that the tenant was served with notice of the hearing, by e-mail, on 05 February 2020. A copy of that e-mail was submitted by the landlord and he pointed out that that e-mail address was provided by the tenant in the rental application. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issue 1: Rent - \$1911.21

Relevant Submissions

7. The landlord stated that on 30 November 2019 the tenant had submitted a rental application to the landlord and a copy of that application was submitted by the landlord (█ #1).
8. The landlord testified that the tenant's application was approved and she paid to him a security deposit of \$565.00 on 03 December 2019. The landlord stated that he had entered into a verbal rental agreement with the tenant at that time and a written lease was afterwards drafted which would be signed when the tenant took possession of the property and when she paid her 1st month's rent.
9. According to their verbal agreement, the tenancy was to run for a fixed-term of 1-year, commencing 15 January 2020. The agreed monthly rent was set at \$750.00, due on the fist day of each month. For January 2020, the landlord calculated that tenant would pay a pro-rated rent of \$411.21.
10. The landlord stated that the tenant contacted him on 20 December 2019 and informed him that she had broken her leg and would not be able to move into rented premises.
11. The landlord stated that the tenant never did take possession of the property. No keys were issued and she did not sign the lease.
12. The landlord argued that as the tenant had committed to a lease of 1-year, her termination notice was invalid. He testified that he has been advertising the unit for rent but to the date of the hearing, he has not been able to find new tenants and the unit has sat vacant since 15 January 2020.
13. The landlord is seeking an order for a payment of the agreed pro-rated rent for January 2020, as well as a payment of the full rent for the months of February and March 2020.

14. The landlord calculates that the tenant owes \$1911.21 in compensation for lost rental income for the period ending 31 March 2020.

Analysis

15. The evidence submitted at the hearing establishes, on the balance of probabilities, that the tenant had entered into verbal, 1-year rental agreement with the landlord commencing 15 January 2020.
16. Given that this lease was not set to expire until 14 January 2021, the tenant could not terminate the agreement prior to that date.
17. Where a tenant does not terminate her agreement in accordance with the *Residential Tenancies Act, 2018*, she is considered to have abandoned the property and she is liable for any damages caused as a result of that abandonment, including any loss of rental income suffered by the landlord.
18. I accept the landlord's claim that he had been advertising the unit for rent but, to the date of the hearing, he has been unable to secure new tenants and he has received no rental income for that property.
19. Accordingly, I find that the landlord is entitled to compensation for lost rental income for the period from 15 January to the date of the hearing, 25 February 2020. I calculate that amount to be \$1008.20 (\$750.00 per month x 12 months ÷ 366 days x 41 days).

Decision

20. The landlord's claim for a payment of rent succeeds in the amount of \$1008.20.

Issue 2: Late fees - \$75.00

Relevant Submissions

21. The landlord has assessed late fees in the amount of \$75.00.

Analysis

22. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

- 15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

23. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) *\$5.00 for the first day the rent is in arrears, and*
- (b) *\$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

Decision

24. As the tenant has been in arrears since 16 January 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Hearing Expenses

25. The landlord paid \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Issue 4: Security Deposit

26. The landlord stated that the tenant had paid a security deposit of \$565.00 on 03 December 2019. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and order.

Summary of Decision

27. The landlord is entitled to the following:

- a) Rent Owing \$1008.20
- b) Late Fees \$75.00
- c) Hearing Expenses \$20.00
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- d) **LESS: Security Deposit (\$565.00)**
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- e) Total Owing to Landlord \$538.20

28 May 2020

Date

John R. Cook
Residential Tenancies Tribunal