

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0367-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on June 27, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED] represented by [REDACTED] hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED] hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord amended the claim for payment of rent from \$1970.00 to \$1425.00.
5. The tenant was not present or represented at the hearing. Prior to the start of the hearing I called the telephone number on file but I was unable to reach the tenant. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
6. 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.

7. The affidavit of service submitted by the landlord shows that the application for dispute resolution for the hearing for June 2, 2019 was sent by registered mail and the tenant signed for the registered mail on May 16, 2019. On June 2, 2019 the hearing was rescheduled and the notice of the rescheduled hearing was sent by registered mail on June 6, 2019. The tenant did not sign for the registered mail. As per Section 42.(6) of the Act a notice that is sent by registered mail or express post is considered to be served on the fifth day after mailing. The notice would have been considered served on June 11, 2019 and the tenant has had 15 days to provide a response. As the tenant was 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 her absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$1425.00;
 - c. Late fees in the amount of \$75.00;
 - d. Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 14, 15, 19, 34, 35 and 42 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 - \$1425.00

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

Landlord Position

12. The landlord stated that the tenant moved into the unit on March 1, 2014 for a one year term with rent set at \$875.00 per month due on the 1st of each month. The lease has been renewed each year and the current rate of rent is \$905.00.
13. The landlord testified that the last time the tenant was paid up to date in rent was in October 2018. She testified that since October 2018 the tenant has not been paying the full amount of rent each month. The tenant has made

payments towards the rent each month and the amount owing as of the date of the hearing is \$1425.00 as per the lease ledger (LL #3). The lease ledger shows the transactions from February 25, 2014 - June 25, 2019.

Analysis

14. I have reviewed the testimony and evidence of the landlord and I find there is one issue that needs to be addressed; is the rent in arrears.
15. Based on the lease ledger, I find the tenant has not had a zero balance since October 26, 2018. I also find that since October 2018 the tenant has made payments towards the rent each month and there is a balance at the end of each month. The amount owing at the end of May 2019 is \$1320.00. Further, during the month of June 2019 the tenant made two payments totaling \$800.00.
16. Rent for the month of June can only be awarded up and including the day of the hearing (June 27, 2019). The rent owing for June 1 – 27, 2019 is \$3.25 ($\$905.00 \times 12 \text{ months} = \$10,860.00 \div 365 \text{ days} = \$29.75 \text{ per day} \times 27 \text{ days} = \$803.25 - \$800.00 = \3.25). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$29.75 beginning on June 28, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

17. The landlord's claim for rent succeeds as per the following:
 - a. Rent owing up to May 31, 2019\$1320.00
 - b. Rent owing for June 1 – 27, 2019\$3.25
 - c. Total arrears.....\$1323.25
 - d. A daily rate beginning June 28, 2019..... \$29.75

Issue 2: Vacant Possession of the Rental Premises

18. An application for vacant possession is determined by the validity of the termination notice issued by the landlord. In this case, the termination notice was issued under Section 19 of the Act where the tenant contravenes the Act by not paying rent.

Landlord Position

19. The landlord testified a termination notice (Exhibit LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was served on the tenant by posting a

notice on the door of rental unit on April 9, 2019 to vacate on April 22, 2019. The notice was served because the tenant had a balance at the end of each month since November 2018. To the date of the hearing the tenant still resides in the unit.

Analysis

20. Section 19.(1)(b) requires that rent be overdue 5 days or more before a landlord can give a termination notice to vacate the unit not less than 10 days after the notice is served on the tenant. As determined in paragraph 17 above, the rent was in arrears on April 9, 2019 when the termination notice was served. After reviewing the notice I find the notice allowed the required amount of time and contains all of the necessary information to serve on the tenant as per sections 19.(4) and 34 of the Act. The notice was served in accordance with Section 35 of the Act.

Decision

21. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL should the landlord require the Sheriff to enforce the Order of Possession.

Issue 3: Late fees - \$75.00

Landlord Position

22. The landlord testified they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since November 2018.

Analysis

23. The rental arrears has been established in paragraph 17 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st 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 November 2018 the late fees have exceeded the maximum amount of \$75.00.

Decision

24. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Application for Security Deposit

25. 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

26. The landlord testified a \$437.50 security deposit was paid on February 25, 2014.

Analysis

27. A security deposit was paid in February 2014. As the landlord has been successful in her claim for the payment of rent and late fees, she shall retain the \$437.50 security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$44.55

29. 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

30. The landlord paid an application filing fee in the amount of \$20.00 and registered mail in the amount of \$24.55 (LL #4). The landlord is seeking this cost.

Analysis

31. The costs the landlord incurred to make the application and serve the application are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. Therefore, I find the tenant is responsible to cover the cost of the hearing expenses in the amount of \$44.55.

Decision

32. The tenants shall pay the landlord's hearing costs in the amount of \$44.55.

Summary of Decision

33. The landlord is entitled to the following:

- a) Payment of rent\$1323.25
- b) Late fees \$75.00
- c) Hearing expenses \$44.55
- d) **LESS: Security deposit** **(\$437.50)**
- e) **Amount owing to the landlord****\$1005.30**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$29.75 beginning June 28, 2019 and continuing until the day the landlord obtains possession of the rental unit.
- h) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

July 5, 2019
Date


Residential Tenancies Section