

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0401-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:25 a.m. on June 17, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED] hereafter referred to as the landlord, participated in the hearing.
3. The tenants, [REDACTED] and [REDACTED] hereafter referred to as tenant1 and tenant2, respectively, did not attend the hearing.

Preliminary Matters

4. The landlord amended the claim for payment of rent from \$728.00 to \$1528.00 and the claim for damages from \$2710.00 to \$3055.00.
5. The address of the rental unit should read [REDACTED], not [REDACTED].
6. The tenants were not present or represented at the hearing. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
7. 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.

8. The affidavits of service submitted by the landlord show that the notices of this hearing were personally served on June 5, 2019 and the tenants have had 11 days to provide a response. As the tenants were 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 their absence.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$1528.00;
 - c. Late fees in the amount of \$75.00;
 - d. Compensation for damages in the amount of \$3055.00;
 - e. Hearing expenses.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
11. Also relevant and considered in this case are Sections 15, 19, 34 and 35 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 - \$1528.00

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

Landlord Position

13. The landlord stated that the tenants moved into the unit on January 1, 2019 on a month to month tenancy with rent set at \$800.00 per month due on the 1st of each month.
14. The landlord testified the tenants paid the rent for January 2019 in cash. Since January 2019 the rent has been paid by a third party but he has not received the full amount each month. He received \$672.00 in February 2019 and \$600.00 for each month for the months of March, April and May. He said he has not received any monies towards the rent for June 2019. The total amount owing from February – June 2019 is \$1528.00 (\$128.00 + \$200.00 + \$200.00 + \$200.00 + \$800.00 = \$1528.00). The landlord submitted a copy of the rent roll (LL #1).

Analysis

15. I have reviewed the testimony and evidence of the landlord and I find the landlord has not received the full rent for the months of February – May 2019. The amount owing for February – May 2019 is \$728.00. Also the landlord has not received any monies towards June’s rent.
16. Rent for the month of June can only be awarded up and including the day of the hearing (June 17, 2019). The rent owing for June 1 – 17, 2019 is \$447.10 ($\$800.00 \times 12 \text{ months} = \$9600.00 \div 365 \text{ days} = \$26.30 \text{ per day} \times 17 \text{ days} = \447.10). Additionally, the tenants are responsible for rent on a daily basis in the amount of \$26.30 beginning on June 18, 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 for February 2019.....\$128.00
 - b. Rent owing for March 2019\$200.00
 - c. Rent owing for April 2019 \$200.00
 - d. Rent owing for May 2019 \$200.00
 - e. Rent owing for June 1 – 17, 2019 \$447.10
 - f. Total arrears..... \$1175.10
 - g. A daily rate beginning June 18, 2019 \$26.30

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 #10) under Section 19 of the *Residential Tenancies Act, 2018*, was served on the tenants on May 10, 2019 to vacate on May 21, 2019 because he had not received the full amount of rent for the months of February – May 2019. The notice was posted on the door of the rental unit. To the date of the hearing the tenants still reside 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 16 above, there is rent owing since February 2019. 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 February 2019.

Analysis

23. The rental arrears has been established in paragraph 16 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 February 2019 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: Compensation for Damages - \$3055.00

25. In any damage claim the burden of proof lies with the landlord to establish that the damage exists and that the tenants are responsible for the costs of repairs.

Landlord Position

26. The landlord testified that there was a fire in the house on May 11, 2019. There are two units in the house with a common entrance. When the firemen came to the house they were able to enter the house but in order to get into the units they had to kick in the interior doors. The fire was in the kitchen of the unit belonging to tenant1 and tenant2. The fire caused damage to the kitchen. The two interior doors were damaged when the firemen had to gain entry to the units. The landlord hired a person in May 2019 to replace the doors. The landlord said he served a request for repairs (LL #3) on the tenants on June 6, 2019 to carry out the repairs to the kitchen by June 14, 2019. Included in the request for repairs was replacement of the exterior back door and the locks.
27. The landlord testified that he paid ██████████ (LL #5) \$325.00 on May 15, 2019 to replace the interior doors going to the two units. The doors were kicked in on the night of the fire. The door going to the tenants unit was kicked in because of the fire in the kitchen and the door going to the other unit was kicked in because the firemen had to check out the other unit. The landlord did not present any photographs of the doors before they were repaired. The landlord said the fire was caused by the tenants. They turned on the oven and the stove top and they left the unit.
28. The landlord testified that he received a quote in the amount of \$300.00 plus tax from ██████████ (LL #7) to replace the interior door to the unit. This door was replaced after the fire in the unit in May 2019. The door is damaged and it has to be replaced. The landlord presented a photograph of the door (LL #6).
29. The landlord testified that the cupboards, walls and ceiling in the unit were damaged by the fire. He said one cupboard and a piece of drywall has to be replaced. He received a quote from ██████████ (LL #8) in the amount of \$1160.00 to make the repair. The quote includes the removal and replacement of the damaged cupboard and drywall and the plastering and painting of the walls and the repairs to the other cupboards. The unit was renovated in 2018 with new cupboards, windows and doors.
30. The landlord testified that the exterior back door has to be replaced because the door was kicked in. The door was installed in 2018. He received a quote from ██████████ (LL #2) in the amount of \$1100.00 to replace the door.
31. The landlord testified that he paid ██████████ (LL#4) \$125.00 to replace the lock and the deadbolt to the unit after the fire. The lock was destroyed.

Analysis

- 32. I have reviewed the testimony and the evidence of the landlord and I find the landlord did not provide any evidence to show the condition of the two interior doors prior to having them replaced in May 2019. He did not present any photographs to show the condition of the exterior back door and the locks.
- 33. Based on the photographs presented I find the cupboards, the walls and the ceiling in the kitchen were damaged. Cupboards and the painting of the unit are depreciable items. As the cupboards were installed in 2018 and the unit was painted in 2018, the quote the landlord received to make the repairs to the kitchen is reasonable.
- 34. With regard to replacement of the interior entrance door, the photograph the landlord presented shows that the door has to be replaced. The quote the landlord received to replace the door is reasonable.

Decision

35. The landlord’s claim for damages succeeds as per the following:

- a. Repairs to the kitchen\$1160.00
- b. Replacement of the interior door \$345.00
- c. Total owing for damages\$1505.00

Issue 5: Application for Security Deposit

36. 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

37. The landlord testified a \$600.00 security deposit was paid in December 2018.

Analysis

38. A security deposit was paid in December, 2018. As the landlord has been partially successful in his claim for the payment of rent, late fees and compensation for damages, he shall retain the \$600.00 security deposit as outlined in this decision and order.

Decision

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

Issue 6: Hearing Expenses - \$20.00

40. 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

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

Analysis

42. The costs 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*. Therefore, I find the tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

43. The tenants shall pay the landlord’s hearing costs in the amount of \$20.00.

Summary of Decision

44. The landlord is entitled to the following:

- a) Payment of rent\$1175.10
- b) Late fees..... \$75.00
- c) Compensation for damages\$1505.00
- d) Hearing expenses..... \$20.00
- e) **LESS: Security deposit** **(\$600.00)**
- f) Amount owing to the landlord\$2175.10
- g) Vacant Possession of the rented premises
- h) A daily rate of rent in the amount of \$26.30 beginning June 18, 2019 and continuing until the day the landlord obtains possession of the rental unit.

- i) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

June 26, 2019
Date


Residential Tenancies Section