

## Residential Tenancies Tribunal

Decision 19-0029-03

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:40 a.m. on January 16, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] represented by [REDACTED], hereafter referred to as the landlord participated in the hearing by conference call.
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing by conference call.

### Preliminary Matters

4. The landlord amended the claim for the payment of rent from \$2500.00 to \$800.00.

### Issues before the Tribunal

5. The landlord is seeking the following:
  - a. Vacant possession of the rental premises;
  - b. Payment of rent in the amount of \$800.00;
  - c. Late fees in the amount of \$75.00;
  - d. 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, 19, 34 and 35 of the Act.

### Issue 1: Payment of rent - \$800.00

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 in February 2019 on a month to month tenancy with rent set at \$800.00 per month due on the 1<sup>st</sup> of each month. The tenant made the following payments towards the rent:

February 18, 2019	\$800.00
March 22, 2019	\$800.00
May 6, 2019	\$1200.00
June 6, 2019	\$800.00
July 18, 2019	\$600.00
August 23, 2019	\$1000.00
November 22, 2019	\$1100.00
December 5, 2019	\$900.00
December 18, 2019	<u>\$1600.00</u>
	\$8800.00

10. The landlord further testified that they have not received any monies towards the rent since the payment was made on December 18, 2019. The landlord submitted a copy of the rent schedule (LL #2).

### Tenant Position

11. The tenant testified that she was paid up to the end of December 2019 and she has not paid any money towards the rent for January 2020.

### Analysis

12. 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 the last time the tenant paid rent was on December 18, 2019 in

the amount of \$1600.00. At that time the rent was paid in full up to the end of December 2019. Rent for the month of January can only be awarded up and including the day of the hearing (January 16, 2020). The amount of rent owing for January 1 - 16, 2020 is \$419.68 ( $\$800.00 \times 12 \text{ months} = \$9600.00 \div 366 \text{ days} = \$26.23 \text{ per day} \times 16 \text{ days} = \$419.68$ ). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$26.23 beginning on January 17, 2020 and continuing until the day the landlord obtains vacant possession of the rented premises.

### **Decision**

13. The landlord's claim for rent succeeds as per the following:
- a. Rent owing for January 1 – 16, 2020 .....\$419.68
  - b. A daily rate beginning January 17, 2020 .....\$26.23

### **Issue 2: Vacant Possession of the Rental Premises**

14. 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

15. The landlord testified that a termination notice under Section 19 of the *Residential Tenancies Act, 2018*, was put under the door of the rental unit on November 29, 2019 to vacate on December 12, 2019 because the rent was in arrears for \$1700.00. December's rent became due on December 1, 2019 leaving a balance of \$2500.00. The tenant made 2 payments in December; \$900.00 was paid on December 5, 2019 and the balance of \$1600.00 was paid on December 18, 2019. To the date of the hearing the tenant still resides in the unit. The landlord submitted a copy of the termination notice dated November 29, 2019.
16. After the tenant gave her testimony the landlord testified that she had given the tenant a termination notice to vacate on December 23, 2019 but that notice was not a proper notice.

## Tenant Position

17. The tenant testified that the first termination notice she received she had to vacate on December 23, 2019. She acknowledges that a termination notice was left under her door on November 29, 2019 to vacate on December 12, 2019 and the outstanding rent was paid by December 18, 2019.

## **Analysis**

18. 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. The rent was in arrears \$1700.00 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. Under section 19.(2) if the tenant pays the outstanding rent by the date specified in the notice the rental agreement is not terminated. The rent was not paid in full until December 18, 2019 and the effective date of the notice was December 12, 2019. The tenant did not pay within the specified date. Therefore, the termination notice is a valid notice.

## **Decision**

19. 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

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

## **Analysis**

21. The rental arrears has been established in paragraph 13 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 April 2019 the late fees have exceeded the maximum amount of \$75.00.

**Decision**

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

**Issue 4: 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 \$400.00 security deposit was paid in March 2019.

Tenant Position

25. The tenant testified that she paid a \$400.00 security deposit in March 2019.

**Analysis**

26. A security deposit was paid in March 2019. As the landlord has been successful in the claim for the payment of rent and late fees, they shall retain the \$400.00 security deposit as outlined in this decision and order.

**Decision**

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

**Summary of Decision**

28. The landlord is entitled to the following:

- a) Payment of rent.....\$419.68
- b) Late fees ..... \$75.00
- c) **LESS: Security deposit** ..... **(400.00)**
- d) **Total owing to Landlord**.....**\$94.68**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$26.23 beginning January 17, 2020 and continuing until the day the landlord obtains possession of the rental unit.

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

January 30, 2020  
Date

  
Residential Tenancies Section