

## Residential Tenancies Tribunal

Decision 19-0190-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 11:20 a.m. on April 9, 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 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 \$1550.00 to \$2325.00 and the claim for payment of utilities from \$167.83 to \$307.56.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the number on file for the tenant 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 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 notice of this hearing was sent electronically on March 27, 2019 and the tenant has had 12 days to provide a response. The landlord submitted a copy of the text message sent to the tenant along with copies of text messages between himself and the tenant. 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 \$2325.00;
  - c. Payment of utilities in the amount of \$307.56;
  - 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 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 - \$2325.00**

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 May 15, 2018 on a month to month tenancy with rent set at \$775.00 per month due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$400.00 was paid on May 15, 2018.
13. The landlord testified that the rent for January 2019 was paid in two installments through interac e-transfer on February 22, 2019. Since he received the rent on February 22, 2019 he has not received any monies towards the rent. The landlord submitted a copy of the two interac e-transfers (LL #4).

Analysis

- 14. I have reviewed the testimony and evidence of the landlord and I find the rent has not been paid for the months of February, March and April 2019. Rent for the month of April can only be awarded up and including the day of the hearing (April 9, 2019). The amount of rent owing for April is \$229.32 ( $\$775.00 \times 12 \text{ months} = \$9300.00 \div 365 \text{ days} = \$25.48 \text{ per day} \times 9 \text{ days} = \$229.32$ ). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$25.48 beginning on April 10, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

- 15. The landlord’s claim for rent succeeds as per the following:
  - a. Rent owing for February 2019.....\$775.00
  - b. Rent owing for March 2019 .....\$775.00
  - c. Rent owing for April 1 – 9, 2019 .....\$229.32
  - d. Total arrears.....\$1779.32
  
  - e. A daily rate beginning April 10, 2019..... \$25.48

Issue 2: Vacant Possession of the Rental Premises

- 16. 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

- 17. The landlord testified a termination notice was sent by text message and a notice was posted on the door of the unit on March 14, 2019 (Exhibit LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, to vacate on March 26, 2019 because he had not received the rent for the months of February and March 2019. To the date of the hearing the tenant still resides in the unit.

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. As determined in paragraph 15 above, the rent is in arrears. 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 and the notice was served in accordance with section 35.

### **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: Payment of utilities - \$307.56**

#### Landlord Position

20. The landlord testified the tenant was responsible for the payment of the power bill as per the lease agreement (LL #1). She had the power converted back to the landlord's name as of January 31, 2019. The landlord presented copies of the Newfoundland Power bills (LL #3) for the period January 31 – April 5, 2019. The total for the 3 bills is \$307.56.

### **Analysis**

21. I have reviewed the testimony and the evidence presented by the landlord. Based on the lease agreement the tenant was responsible for the payment of utilities. The 3 Newfoundland Power bills the landlord submitted total \$307.56.

### **Decision**

22. The landlord's claim for payment of the utilities succeeds in the amount of \$307.56.

### **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 on May 15, 2018.

## **Analysis**

25. A security deposit was paid on May 15, 2018. As the landlord has been successful in his claim for rent and utilities he shall retain the \$400.00 security deposit as outlined in this decision and order.

## **Decision**

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

## **Issue 6: Hearing Expenses - \$20.00**

27. 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

28. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking these costs.

## **Analysis**

29. 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 tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

## **Decision**

30. The tenant shall pay the landlord's hearing costs in the amount of \$20.00.

**Summary of Decision**

31. The landlord is entitled to the following:

- a) Rent owing ..... \$1779.32
- b) Payment of utilities ... \$307.56
- c) Hearing expenses ..... \$20.00
- d) **LESS: Security deposit** ..... **(\$400.00)**
- e) **Total Owing to Landlord**..... **\$1706.88**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$25.48 beginning April 10, 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.

April 15, 2019  
Date

  
Residential Tenancies Section