

Residential Tenancies Tribunal

Decision 19-0301-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:55 a.m. on May 14, 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 \$1780.00 to \$2670.00.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the tenant to see if he wanted to attend by conference call but the number on file was not the tenant's telephone number. 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 notice of this hearing was sent by e-mail on April 29, 2019 and the tenant has had 14 days to provide a response. The tenant provided his e-mail address on the Application for Rental. The landlord submitted a copy of the Application for Rental. 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 his 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 \$2670.00;
 - c. Late fees;
 - 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 and 34 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 - \$2670.00

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 June 1, 2018 for a 12 month term with rent set at \$890.00 per month due on the 1st of each month. A security deposit in the amount of \$445.00 was paid on June 5, 2018.
13. The landlord testified the tenant's rent was being paid by a third party, Advanced Education, Skills and Labour and the rent was paid up to the end of February 2019. Since they received February's rent on February 1, 2019 they have not received any monies towards the rent. The landlord submitted a copy of the rent ledger showing the transactions from June 1, 2018 – May 1, 2019 (LL #3).

Analysis

14. I have reviewed the testimony and evidence of the landlord and I find the landlord has not received any monies towards the rent for the months of March – May 2019. Rent for the month of May can only be awarded up and including the day of the hearing (May 14, 2019). The amount of rent owing for May 1 – 14, 2019 is \$409.64 ($\$890.00 \times 12 \text{ months} = \$10,680.00 \div 365 \text{ days} = \$29.26 \text{ per day} \times 14 \text{ days} = \409.64). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$29.26 beginning on May 15, 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 March 2019\$890.00
 - b. Rent owing for April 2019\$890.00
 - c. Rent owing for May 1 - 14, 2019\$409.64
 - d. Total arrears.....\$2189.64

 - e. A daily rate beginning May 15, 2019 \$29.26

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 (Exhibit LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was served on the tenant on March 15, 2019 to vacate on March 29, 2019 because the landlord had not received the rent for the month of March 2019. To the date of the hearing the tenants still reside 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 14 above, the rent for the March 2019 had not been paid. 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.

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 they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since March 2019.

Analysis

21. The rental arrears has been established in paragraph 14 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 March 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 the tenant paid a \$445.00 security deposit on June 5, 2018.

Analysis

25. A security deposit was paid on June 5, 2018. As the landlord has been successful in their claim for rent and late fees they shall retain the \$445.00 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 5: 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 this cost.

Analysis

29. The cost 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 \$2189.64
- b) Late fees \$75.00
- c) Hearing expenses \$20.00
- d) **LESS: Security deposit** **(\$445.00)**
- e) **Total Owing to Landlord**..... **\$1839.64**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$29.26 beginning May 15, 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.

May 17, 2019

Date


Residential Tenancies Section