

## Residential Tenancies Tribunal

Decision 19-0329-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:20 a.m. on May 16, 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 the tenants, did not attend the hearing.

### Preliminary Matters

4. The landlord amended the claim for payment of rent from \$2400.00 to \$600.00 and she is seeking late fees.
5. The tenants were not present or represented at the hearing. Prior to the hearing I called the number on file for the tenants but I was unable to reach them. 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 affidavits of service submitted by the landlord show that the notice of this hearing was sent by a text message on May 1, 2019 and the tenants have had 14 days to provide a response. The landlord submitted a copy of the text message and a copy of a text message from the tenants. 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**

8. The landlord is seeking the following:
  - a. Vacant possession of the rental premises;
  - b. Payment of rent in the amount of \$600.00;
  - 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 - \$600.00**

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 tenants moved into the unit on February 1, 2019 on a month to month tenancy with rent set at \$1200.00 per month due on the 1<sup>st</sup> of each month.
13. The landlord testified that the tenants were always late paying the rent. The rent for the month of February was not paid in full until February 22, 2019. March's rent was not paid in full until March 25, 2019 and April's rent was not paid in full until May 14, 2019. She said she received \$600.00 towards May's rent on May 14, 2019. The rent was paid through interac e-transfer except for one payment which was paid in cash on March 16, 2019. The landlord submitted a copy of her bank statement from Public Service C U (LL #2). The statement shows the payments to her account.

**Analysis**

14. I have reviewed the testimony and evidence of the landlord and I find the tenants did not pay the balance of the rent for April 2019 until May 14, 2019. Also on May 14, 2019 the tenants paid \$600.00 towards May’s rent. Rent for the month of May can only be awarded up and including the day of the hearing (May 16, 2019). The amount of rent owing for May 1 – 16, 2019 is \$31.20 ( $\$1200.00 \times 12 \text{ months} = \$14,400.00 \div 365 \text{ days} = \$39.45 \text{ per day} \times 16 \text{ days} = \$631.20 - \$600.00 = \$31.20$ ). Additionally, the tenants are responsible for rent on a daily basis in the amount of \$39.45 beginning on May 17, 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 May 1 - 16, 2019 ..... \$31.20
  - b. Total arrears..... \$31.20
  - c. A daily rate beginning May 17, 2019 ..... \$39.45

**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 #1) under Section 19 of the *Residential Tenancies Act, 2018*, was served on the tenants on May 1, 2019 to vacate on May 12, 2019 because the landlord had not received the full rent for the month of April 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 full amount of rent for the month of April 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. The notice was served in accordance with Section 35 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 she is seeking payment of late fees in the amount of \$75.00 as the tenants always have been late paying the rent.

#### **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 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 never been paid on time 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 tenants paid a \$600.00 security deposit. \$300.00 was paid on December 31, 2018 and another \$300.00 was paid on January 6, 2019.

## **Analysis**

25. A security deposit was paid between December 31, 2018 and January 6, 2019. As the landlord has been successful in her claim for rent, late fees and hearing expenses she shall keep \$126.20 from the security deposit as outlined in this decision and order. The landlord also shall retain the balance of the security deposit in the amount of \$473.80 only in the amount equal to the per diem beginning May 17, 2019 and continuing to the date the landlord obtains possession of the rental premises.

## **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 tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

## **Decision**


30. The tenants 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 for May 1 – 16, 2019..... \$31.20
- b) Late fees ..... \$75.00
- c) Hearing expenses ..... \$20.00
- d) **LESS: Security deposit** ..... **(\$600.00)**
- e) **Balance of the security deposit** ..... **\$473.80**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$39.45 beginning May 17, 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.
- i) The landlord also shall retain the balance of the security deposit in the amount of **\$473.80** only in the amount equal to the per diem beginning May 17, 2019 and continuing to the date the landlord obtains possession of the rental premises.

May 24, 2019  
Date

  
Residential Tenancies Section