

Residential Tenancies Tribunal

Decision 19-0437-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:15 a.m. on July 3, 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. [REDACTED] represented the landlord at the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord discontinued the claim for vacant possession as the tenant vacated on June 18, 2019.
5. The tenant was not present or represented at the hearing. Prior to the start of the hearing I called the telephone number on file 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*. 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.

6. The affidavit of service submitted by the landlord shows that the application for dispute resolution was personally served on the tenant on June 16, 2019. The tenant has had 16 days to provide a response. 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

7. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$875.00;
 - b. Late fees in the amount of \$75.00;
 - c. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 14, 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 - \$875.00

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

Landlord Position

11. The landlord stated that the tenant moved into the unit the last week of December 2018. She signed a term agreement for 6 months to start on January 1, 2019. The rent was set at \$875.00 per month due on the 1st of each month.
12. The landlord testified that she received the rent each month for the months of January – May 2019. May's rent was paid on May 1, 2019. Since receiving May's rent she has not received any monies towards the rent. The landlord presented a copy of the rent ledger (LL #2). She testified that when she hadn't received June's rent by June 7, 2019 she hand delivered a termination notice (LL #3) to the tenant. The notice was under section 19 (failure to pay rent) with an effective date of June 18, 2019. The tenant moved out on June 18, 2019.

Analysis

13. I have reviewed the testimony and evidence of the landlord and I find there is one issue that needs to be addressed; is the rent in arrears. Based on the rent ledger, I find the landlord has not received any rent since May 1, 2019. I also find the landlord served a termination notice on the tenant under section 19 to vacate on June 18, 2019. The tenant vacated on that date. As the tenant vacated on the notice, the landlord would be entitled to rent up to June 18, 2019 the day the tenant vacated. The rent owing for June 1 – 18, 2019 is \$503.10 ($\$850.00 \times 12 \text{ months} = \$10,200.00 \div 365 \text{ days} = \$27.95 \text{ per day} \times 18 \text{ days} = \503.10).

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14. The landlord's claim for rent succeeds as per the following:
- a. Rent owing for June 1 – 18, 2019\$503.10

Issue 2: Late fees - \$75.00

Landlord Position

15. The landlord testified she is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since June 2019.

Analysis

16. 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 June 2019 the late fees have exceeded the maximum amount of \$75.00.

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

Issue 3: Application for Security Deposit

18. 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

19. The landlord testified a \$450.00 security deposit was paid on January 18, 2019.

Analysis

20. A security deposit was paid in January 2019. As the landlord has been successful in her claim for the payment of rent and late fees, she shall retain the \$450.00 security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$35.73

22. 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

23. The landlord paid an application filing fee in the amount of \$20.00 and \$15.73 for the development of photographs (LL #5) for a total of \$35.73. The landlord is seeking these costs.

Analysis

24. The costs the landlord incurred to make the application and photocopy the evidence are considered reasonable expenses 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 \$35.73.

Decision


25. The tenant shall pay the landlord's hearing expenses in the amount of \$35.73.

Summary of Decision

26. The landlord is entitled to the following:

- a) Payment of rent\$503.10
- b) Late fees \$75.00
- c) Hearing expenses \$35.73
- d) **LESS: Security deposit** **(\$450.00)**
- e) **Amount owing to the landlord****\$163.83**

September 4, 2019
Date


Residential Tenancies Section