

Residential Tenancies Tribunal

Decision 19-0536-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:25 a.m. on August 21, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenant, [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 \$5640.00 to \$7940.00.
5. The tenants were 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 tenants.
6. 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.

7. The affidavit of service submitted by the landlord shows that the application for dispute resolution was sent to the tenants by e-mail on July 14, 2019. The landlord provided a copy of the e-mail along with copies of e-mails between himself and the tenants prior to July 14, 2019. 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 \$7940.00;
 - c. Late fees in the amount of \$75.00;
 - 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, 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 - \$7940.00

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 September 18, 2018 for a one year term with rent set at \$1150.00 per month due on the 1st of each month. On November 16, 2018 they signed a second lease for the period November 16, 2018 – September 30, 2019 with the rent due on the 20th of each month. The rental period was still going to be from the 1st to the end of each month but the date the rent was due was changed to the 20th of each month. A security deposit in the amount of \$860.00 was paid on September 18, 2018.
13. The landlord testified that on February 18, 2019 he received \$1500.00; \$700.00 for the remainder of rent for December 2018 and \$800.00 towards the rent for January 2019. On May 2, 2019 he received \$460.00. \$350.00 was the balance owing for January's rent and \$110.00 went towards February's rent. Since that

date he has not received any monies from the tenants. The landlord presented a copy of the payment schedule (LL #2).

Analysis

14. I have reviewed the testimony and evidence of the landlord. I find there is one issue that needs to be addressed; do the tenants owe rent. Based on the evidence presented I find a portion of the rent is owed for February 2019 and the landlord has not received any monies towards the rent for the months of March – August 2019. The amount owing for February 2019 is \$1040.00 and \$5750.00 ($\$1150.00 \times 5 \text{ months} = \5750) is owing for the months of March – July 2019 for a total of \$6790.00 ($\$1040.00 + \$5750.00 = \6790.00). Rent for the month of August can only be awarded up and including the day of the hearing (August 21, 2019). The rent owing for August 1 - 21, 2019 is \$794.01 ($\$1150.00 \times 12 \text{ months} = \$13,800.00 \div 365 \text{ days} = \$37.81 \text{ per day} \times 21 \text{ days} = \794.01). Additionally, the tenants are responsible for rent on a daily basis in the amount of \$37.81 beginning on August 22, 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 up to July 31, 2019 | \$6790.00 |
| b. Rent owing for August 1 - 21, 2019..... | <u>\$794.01</u> |
| c. Total arrears..... | <u>\$7584.01</u> |
| d. A daily rate beginning August 22, 2019 | \$37.81 |

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 that a termination notice (LL #1) under Section 19 of the *Residential Tenancies Act, 2018*, was sent to the tenants through an e-mail on June 21, 2019 to vacate on July 2, 2019 because the rent was arrears since February 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 15 above, the rent is in arrears. 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. I also find 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 he is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since December 2018.

Analysis

21. The rental arrears has been established in paragraph 15 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 December 2018 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 an \$860.00 security deposit was paid on September 18, 2018.

Analysis

25. A security deposit was paid in September 2018. As the landlord has been successful in his claim for the payment of rent, he shall retain the \$860.00 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 tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

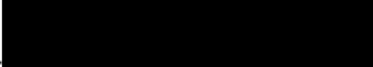
30. The tenants shall pay the landlord's hearing costs in the amount of \$20.00.

Summary of Decision

31. The landlord is entitled to the following:

- a) Payment of rent\$7584.01
- b) Late fees\$75.00
- c) Hearing expenses\$20.00
- d) **LESS: Security deposit****(\$860.00)**
- e) **Amount owing to the landlord****\$6819.01**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$37.81 beginning August 22, 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.

August 28, 2019
Date


Residential Tenancies Section