

Residential Tenancies Tribunal

Decision 19-0539-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:15 a.m. on August 21, 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 to include the payment of rent in the amount of \$457.88.
5. The tenant was not present or represented at the hearing. 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 notice of this hearing was personally served on the tenant on July 12, 2019 and the tenant has had 39 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 his absence.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$457.58;
 - 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, 18, 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 - \$457.58

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 on April 1, 2017 for a one year term with rent set at \$750.00 per month due on the 1st of each month. The lease was renewed for another year with rent set at \$735.00 per month. The rent increased to \$750.00 beginning April 1, 2019. The landlord presented a copy of the rent ledger (LL #1). The landlord testified that the tenant's rent was paid by Advanced Education Skills and Labour. At the end of May the tenant had a credit of \$342.42. In June a cheque in the amount of \$362.50 was received leaving a balance of \$45.08. On July 10, 2019 a cheque was received in the amount of \$725.00 leaving a balance of \$70.08 for July 2018. In August a cheque in the amount of \$362.50 was received leaving a balance of \$457.58 owing up to the end of August 2019.

Analysis

12. I have reviewed the testimony and evidence of the landlord and I find the tenant had a balance at the end of July 2019 in the amount of \$70.08. They received \$362.50 on August 6, 2019; \$70.08 was applied towards the rent owing for July leaving \$292.42 to be applied towards the rent for August. The rent for the month of August can only be awarded up and including the day of the hearing (August 21, 2019). The amount of rent owing for August 1 – 21, 2019 is \$294.53 ($\$850.00 \times 12 \text{ months} = \$10,200.00 \div 365 \text{ days} = \$27.95 \text{ per day} \times 21$

days = \$586.95 - \$292.42 payment = \$294.53). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$27.55 beginning on August 22, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

- 13. The landlord’s claim for rent succeeds as per the following:
 - a. Rent owing for August 1 – 21, 2019\$294.53
 - b. A daily rate beginning August 22, 2019..... \$27.95

Issue 2: Vacant Possession of the Rental Premises

- 14. 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 18.(2)(b) of the Act.

Landlord Position

- 15. The landlord testified a termination notice under Section 18.(2)(b) of the *Residential Tenancies Act, 2018*, was posted on the door of the rental unit on February 28, 2019. The notice was to take effect on May 31, 2019. In May the family of the tenant requested an extension on the date of the notice as they needed more time to find a new place for the tenant. The landlord agreed to extend the notice to June 30, 2019. The Resident Manager of the building and the tenant signed an agreement that the tenant would vacate by June 30, 2019. The landlord presented a copy of the signed agreement (LL #4). To the date of the hearing the tenant still resides in the unit.

Analysis

- 16. Section 18.(2)(b) requires that a landlord give at least a 3 month termination notice to end the tenancy for no reason. After reviewing the termination 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 18.(9) and 34 of the Act. Also the notice was served in accordance with section 35 of the Act.

Decision

- 17. 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: 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 the tenant paid a \$560.00 security deposit in April 2017.

Analysis

20. A security deposit was paid on April 2017. As the landlord has been successful in their claim for rent the landlord shall retain \$314.53 of the security deposit as outlined in this decision and order.

Decision

21. The landlord shall retain \$314.53 from the security deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses - \$20.00

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. The landlord is seeking this cost.

Analysis

24. 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


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

Summary of Decision

26. The landlord is entitled to the following:

- a) The landlord shall retain \$314.53 of the security deposit for:
- b) Payment of rent \$294.53
- c) Hearing expenses..... \$20.00
- d) Total \$314.53
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$27.95 beginning August 22, 2019 and continuing until the day the landlord obtains possession of the rental unit.
- g) 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