

Residential Tenancies Tribunal

Decision 19-0595-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 11 September 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$875.00;
 - b. An order for a payment of late fees in the amount of \$75.00; and
 - c. An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone from the hearing room. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from

the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where a 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 has been properly served. The landlord submitted an affidavit with his application stating that the tenant was served with notice of the hearing, by e-mail, on 24 July 2019 and he has had 48 days to provide a response. The landlord also submitted a copy of the e-mail that was sent to the tenant as well as a copy of a text-message in which the tenant provides the landlord with that e-mail address. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

7. The landlord amended his application at the hearing. He stated that he was no longer seeking an order for possession of the rented premises as the tenant moved out on 29 July 2019.

Issue 1: Rent Owing - \$875.00

Relevant Submissions

The Landlords' Position

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 September 2018 and a copy of the executed lease was submitted at the hearing (█ #1). The agreed rent is set at \$850.00 per month and it is acknowledged in the agreement that the tenant had paid a security deposit of \$635.00.
9. The tenant's rent was paid by pre-authorized payments but in July 2019 the payment was reversed for the reason of "not sufficient funds" (NSF).
10. Accordingly, the landlord issued the tenant a termination notice on 18 July 2019 and a copy of that notice was submitted with his application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 29 July 2019. The tenant vacated on that date.
11. The landlord is seeking an order for a payment of \$850.00 in rent for July 2019 and he also assessed an NSF fee of \$25.00 for the reversed payment.

Analysis

12. I accept the landlord's evidence which shows that the tenant had not paid his rent for July 2019. As such, his claim succeeds.
13. I address the issue of the NSF fees in the next section.

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$850.00.

Issue 2: Late Fees - \$75.00

Issue 3: NSF Fees - \$25.00

15. The landlord has assessed late fees in the amount of \$75.00 and he has assessed an NSF fee of \$25.00 for the reversed payment in July 2019.

Analysis

16. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

(2) *Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.*

17. Regarding the late fees, the minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

18. The landlord's rent records show that the tenant has been in rental arrears since 02 July 2019. I therefore find that he is entitled to a payment of the maximum late fee of \$75.00 set by the minister.

19. His records also show that July's rent was reversed for the reason of "non-sufficient funds" and the landlord testified that he was charged \$25.00 by his bank. I therefore find that he is also entitled to a payment of the \$25.00 included in his rent records.

Decision

- 20. The landlord’s claim for late fees succeeds in the amount of \$75.00.
- 21. The landlord’s claim for NSF fees succeeds in the amount of \$25.00.

Issue 3: Hearing Expenses

- 22. The landlord paid \$20.00 to file this application. As the landlord’s claim has been successful, the tenant shall pay this hearing expense.

Issue 4: Security Deposit

- 23. The landlord stated that the tenant had paid a security deposit of \$635.00 on 29 August 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord’s claim has been successful, he shall retain that deposit as outlined in this decision and order.


Summary of Decision

- 24. The landlord is entitled to the following:

a) Rent Owing	\$850.00
b) Late Fees	\$75.00
c) NSF Fees	\$25.00
d) Hearing Expenses	\$20.00
e) LESS: Security Deposit	(\$635.00)
f) Total Owing to Landlord	<u>\$335.00</u>

11 February 2020

Date



John R. Cook
Residential Tenancies Tribunal