

## Residential Tenancies Tribunal

Decision 19-0597-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:30 a.m. on September 11, 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, participated in the hearing.

### Preliminary Matters

4. The landlord amended the claim for the payment of rent from \$3228.00 to \$4842.00.

### Issues before the Tribunal

5. The landlord is seeking the following:
  - a. Vacant possession of the rental premises;
  - b. Payment of rent in the amount of \$4842.00;
  - c. Hearing expenses.

## **Legislation and Policy**

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case are Sections 14, 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 - \$4842.00**

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

### Landlord Position

9. The landlord testified that the tenant moved into the unit the last week of February 2019 with rent set at \$807.00 per month due on the 1<sup>st</sup> of each month. The first payment was due on March 1, 2019. Since the tenant moved into the unit they only have received the rent for the month of March. The rent was withdrawn from the tenant's account each month but a few days later it was returned as NSF for the months of April – September 2019. The landlord submitted a copy of the Statement of Account for the period April 4, 2019 – September 4, 2019 (LL #3).

### Tenant Position

10. The tenant testified that she owes some rent. She paid the rent for the months of March and April 2019 and a small portion of rent for May 2019. She said she went to the office sometime in April to pay the rent but she does not have a receipt for the rent. She cannot remember the amount she paid for May 2019.

### Analysis

11. I have reviewed the testimony and evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; how much rent does the tenant owe. The rent was paid for the month of March 2019. The tenant did not present any receipts to indicate the rent was paid for April or a portion for May. Based on the Statement of Rent Account I find the landlord has not received the rent since March 2019. Rent owing for the period April – August 2019 is \$4035.00 ( $\$807.00 \times 5 \text{ months} = \$4035$ ). Rent for the month of September can only be awarded up and including the day of the hearing

(September 11, 2019). The amount of rent owing for September 1 - 11, 2019 is \$291.83 ( $\$807.00 \times 12 \text{ months} = \$9684.00 \div 365 \text{ days} = \$26.53 \text{ per day} \times 11 \text{ days} = \$291.83$ ). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$26.53 beginning on September 12, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

**Decision**

12. The landlord’s claim for rent succeeds as per the following:

- a. Rent owing up to August 31, 2019 .....\$4035.00
- b. Rent owing for September 1 - 11, 2019 .....\$291.83
- c. Total rent owing .....\$4326.83
  
- d. A daily rate beginning September 12, 2019.....\$26.53

**Issue 2: Vacant Possession of the Rental Premises**

13. 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

14. The landlord testified that a termination notice (LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was sent by e-mail to the tenant on July 16, 2019 to vacate on July 28, 2019 because they had not received any rent since March 2019. To the date of the hearing the tenant still resides in the unit.

Tenant Position

15. The tenant acknowledges she received the termination notice.

**Analysis**

16. 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 12 above, rent has been in arrears since April 2019. 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 tenants as per sections 19.(4) and (34) of the Act. 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 a \$300.00 security deposit was paid in February 2019.

#### Tenant Position

20. The tenant testified that she paid a \$300.00 security deposit.

## Analysis

21. A security deposit was paid in February 2019. As the landlord has been successful in their claim for the payment of rent, they shall retain the \$300.00 security deposit as outlined in this decision and order.

## Decision

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

### Issue 4: Hearing Expenses - \$20.00

23. 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

24. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

**Analysis**

25. 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*. As the landlord's claim was successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

**Decision**


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

**Summary of Decision**

27. The landlord is entitled to the following:

- a) Payment of rent .....\$4326.83
- b) Hearing expenses ..... \$20.00
- c) **LESS: Security deposit** .....(\$300.00)
- d) **Total owing to Landlord**.....**\$4046.83**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$26.53 beginning September 12, 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.

September 16, 2019  
Date

  
Residential Tenancies Section