

## Residential Tenancies Tribunal

Decision 19-0674-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 11:15 a.m. on October 22, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

### Preliminary Matters

4. The landlord amended the claim for the payment of rent from \$756.00 to \$2128.00 up to October 31, 2019.
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 first hearing was scheduled for October 8, 2019. At that time both the landlord and tenant agreed to postpone the hearing until October 22, 2019 @ 11:00 a.m. Both the landlord and tenant were served with a Notice of Rescheduled Hearing on October 8, 2019. As the tenant was properly served with the notice of rescheduled hearing, 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. Vacant possession of the rental premises;
  - b. Payment of rent in the amount of \$2128.00;
  - c. Late fees in the amount of \$75.00;
  - d. 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 - \$2128.00**

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 on September 1, 2015 for a one year term with rent due on the 1<sup>st</sup> of each month. The term expired and the tenancy converted to a month to month tenancy. The rent increased to \$835.00 per month in January 2019. The landlord testified that \$676.00 of the tenant's rent was paid by Newfoundland and Labrador Housing and \$149.00 was paid by Advanced Education Skills and Labour (AESL) for a total of \$825.00, leaving \$10.00 owing each month since January 2019. He testified that they have not received the portion of rent from Newfoundland and Labrador Housing since July 2019. They have received AESL's portion of \$149.00 towards the rent up to October 2019. The amount owing up to October 31, 2019 is \$2128.00. The landlord submitted a copy of the rent ledger (LL #2).

**Analysis**

12. I have reviewed the testimony and evidence of the landlord and I have determined that there is one issue that needs to be addressed; is rent owing. I find that when the rent increased by \$10.00 in January 2019 the tenant did not pay the extra \$10.00 per month. I also find that the tenant’s rent was being paid by Newfoundland and Labrador Housing and AESL. The landlords received AESL’s portion up to October 2019 but they have not received the portion from Newfoundland and Labrador Housing since they paid July’s rent on June 28, 2018. \$70.00 (7 months x \$10.00 per month = \$70.00) is owed up to July 31, 2019; \$686.00 (\$835.00 - \$149.00 = \$686.00) is owed for August 2019; \$686.00 is owed for September 2019 for a total of \$1442.00 (\$70.00 + \$686.00 + \$686.00 = \$1442.00). Rent for the month of October can only be awarded up and including the day of the hearing (October 22, 2019). The amount of rent owing for October 1 – 22, 2019 is \$454.90 (\$835.00 x 12 months = \$10,020.00 ÷ 365 days = \$27.45 per day x 22 days = \$603.90 - \$149.00 payment = \$454.90). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$27.45 beginning on October 23, 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 up to July 31, 2019 .....\$70.00
- b. Rent owing for August 2019 .....\$686.00
- c. Rent owing for September 2019 .....\$686.00
- d. Rent owing for October 1 - 22, 2019 .....\$454.90
- e. Total rent owing .....\$1896.90
  
- f. A daily rate beginning October 23, 2019..... \$27.45

**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 19 of the Act where the tenant contravenes the Act by not paying rent.

**Landlord Position**

15. The landlord testified that a termination notice (LL #1) under Section 19 of the *Residential Tenancies Act, 2018*, was posted on the door of the rental unit on

August 19, 2019 to vacate on August 30, 2019 because they had not received the rent for the month of August 2019. To the date of the hearing the tenant still resides in the unit.

### **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 13 above, the rent was in arrears when the termination notice was issued. 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 tenant 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: Late fees - \$75.00**

#### Landlord Position

18. The landlord testified he is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since January 2019.

### **Analysis**

19. The rental arrears has been established in paragraph 13 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> 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 January 2019 the late fees have exceeded the maximum amount of \$75.00.

### **Decision**

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

### **Issue 4: Application for Security Deposit**

21. 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

22. The landlord testified a \$581.25 security deposit was paid on August 19, 2015.

#### **Analysis**

23. A security deposit was paid in August 2015. As the landlord has been successful in their claim for the payment of rent and late fees, they shall retain the \$581.25 security deposit as outlined in this decision and order.

#### **Decision**

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

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

25. 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

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

#### **Analysis**

27. 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 pay the landlord's hearing expenses in the amount of \$20.00.

#### **Decision**

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


**Summary of Decision**

29. The landlord is entitled to the following:

- a) Payment of rent..... \$1896.90
- b) Late fees ..... \$75.00
- c) Hearing expenses ..... \$20.00
- d) **LESS: Security deposit** ..... **(581.25)**
- e) **Total owing to the Landlord** ..... **\$1410.65**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$27.45 beginning October 23, 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.

October 24, 2019

Date

  
Residential Tenancies Section