

## Residential Tenancies Tribunal

Decision 19-0703-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:15 am on 28 October 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 \$465.00;
  - 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, 19 and 42 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

### Preliminary Matters

6. The tenant did not attend 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 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 has been properly served. The landlord submitted an affidavit stating that she had sent the notice of hearing to the tenant by registered mail on 20 September 2019. The associated tracking history shows that the tenant did not collect that notice and it was eventually returned to the landlord. Section 42 of the *Residential Tenancies Act, 2018* deals with the service requirements applicants must abide by and subsection 42.(6) states:

*(6) For the purpose of this section, where a copy of the application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the copy of the application was prepaid and properly addressed and sent.*

As the application was sent on 20 September 2019, it is considered to have been served on 25 September 2019, meeting the 10-day notice policy. 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 her application at the hearing and stated that she was seeking \$495.00 in rent.

## **Issue 1: Rent Owning - \$495.00**

### **Relevant Submissions**

#### The Landlords' Position

8. The landlord stated that she had entered into a fixed-term rental agreement with the tenant on 01 July 2007 and a copy of the executed lease was submitted with her application (█ #1). The current rent is set at \$805.00 per month.
9. The landlord submitted rent records at the hearing showing the payments she had received from the tenant since 2012 (█ #2). The landlord stated that the tenant's rent is currently being paid on his behalf by the Department of Advanced Education, Skills and Labour (AESL).
10. The landlord's records show that the tenant has been charged the rent of \$805.00 since 01 January 2019 and that he was being charged \$790.00 prior to that point. Although the AESL has been making regular monthly payments to the landlord since January 2019, it has only been paying to the landlord \$790.00 per month.

11. The same issue arose in 2016 and 2017. In January 2017 the rent increased to \$790.00. In 2016 the rent was set at \$785.00 and in 2015 the tenant was being charged \$775.00. But during 2015, 2016 and 2017 AESL was only paying \$775.00.
12. Because of the discrepancy between the rent being charged and the payments paid on the tenant's behalf by AESL, the tenant has been in arrears since 2014 and the arrears have been gradually accumulating since then.
13. The rent records show that the tenant currently has a balance owing of \$495.00 for the period ending 31 October 2019.

### **Analysis**

14. The testimony and evidence submitted at the hearing establishes that the tenant has not paid rent as required. As the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
15. I calculate the rent owing to the date of the hearing to be \$431.16 (the tenant had a credit of \$310.00cr for the period ending 30 September 2019 and I calculate that he owes \$741.16 for October 2018 ( $\$805.00 \text{ per month} \times 12 \text{ months} = \$9660.00 \text{ per year} \div 365 \text{ days} = \$26.47 \text{ per day} \times 28 \text{ days} = \$741.16$ )).

### **Decision**

16. The landlord's claim for a payment of rent succeeds in the amount of \$431.16.
17. The tenant shall pay a daily rate of rent in the amount of \$26.47, beginning 29 October 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

### **Issue 2: Late fees - \$75.00**

#### **Relevant Submissions**

##### The Landlords' Position

15. The landlord has assessed late fees in the amount of \$75.00.

#### **Analysis**

16. Section 15.(1) 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.*

17. The minister has set the following fees:

*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.*

### **Decision**

18. As the tenant has been in arrears since 2015, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

### **Issue 3: Vacant Possession of the Rented Premises**

#### **Relevant Submissions**

##### The Landlords' Position

19. With her application, the landlord submitted a copy of a termination notice (█ #3) which she stated she had posted to the tenant's door on 16 July 2019.
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 28 July 2019.
21. The landlord is seeking an order for vacant possession of the rented premises.

#### **Analysis**

22. Section 19 of the *Residential Tenancies Act, 2018* states:

##### ***Notice where failure to pay rent***

**19.** (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b),*

...

(b) *where the residential premises is*

(i) *rented from month to month,*

(ii) *rented for a fixed term, or*

(iii) *a site for a mobile home, and*

*the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.*

23. According to the landlord's rent records, on 16 July 2019 the tenant was in arrears in the amount of \$450.00 and had been in arrears since the beginning of that month.
24. The landlord did receive a payment of \$790.00 on 31 July 2019 from AESL, but that payment was made 3 days after the effective termination date of 28 July 2019.
25. As the notice meets the timeframe requirements set out in section 19 of the *Act* it is a valid notice.

### **Decision**

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

### **Issues 4: Hearing Expenses**

28. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application and a receipt for \$10.93 for the costs of serving the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expenses.

### **Issue 5: Security Deposit**

29. The landlord testified that the tenant paid a security deposit of \$280.00 on 13 February 2012. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

## Summary of Decision

30. The landlord is entitled to the following:

- A payment of \$257.09, determined as follows
  - a) Rent Owing .....\$431.16
  - b) Late Fees .....\$75.00
  - c) Hearing Expenses.....\$30.93
  - d) LESS: Security Deposit..... (\$280.00)
  - e) Total Owing to Landlord .....\$257.09
- A payment of a daily rate of rent in the amount of \$26.47, beginning 29 October 2019 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

31 October 2019

Date

  
John R. Cook  
Residential Tenancies Tribunal