

Residential Tenancies Tribunal

Decision 19-0722-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 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 original hearing was scheduled for November 5, 2019 and the application was personally served by a process server. The hearing was rescheduled to October 22, 2019. The notice of the rescheduled hearing was served by Residential Tenancies through Xpress Post. After the notice of rescheduled hearing was sent by Xpress Post, the landlord amended the application for dispute resolution. The landlord sent the amended application for dispute resolution electronically to the tenant.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the numbers on file for the tenant but I was unable to reach her. 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 amended application for dispute resolution was sent electronically to the tenant on October 3, 2019 and the tenant has had 18 days to provide a response. The landlord submitted a copy of the e-mail dated October 3, 2019 as well as a copy of an e-mail the tenant sent the company back in September 2017. The e-mail contained the tenant's e-mail address. 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 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 \$2200.00;
 - c. Late fees in the amount of \$75.00;
 - d. NSF charges in the amount of \$90.00;
 - e. 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 - \$2200.00

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 December 1, 2014 for a one year term with rent due on the 1st of each month. The term expired and the tenancy converted to a month to month tenancy. The current rate of rent is set at \$1100.00 per month. The landlord testified that the rent was paid by pre-authorized debit. The rent for the month of August was debited to the tenant's account on August 1, 2019 but on August 8, 2019 it was returned as NSF. On September 1, 2019 the rent was debited to the tenant's account but on September 9, 2019 it was returned as NSF. She testified that the tenant did not pay the rent for August and September 2019. On October 4, 2019 the tenant made a cash payment of \$1100.00 for the rent for the month of October 2019.
- 12. The landlord submitted a copy of the rental agreement (LL #1) and a copy of the Lease statement (LL #3).

Analysis

- 13. 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 the rent for the months of August and September 2019 were debited to the tenant's account but later they were returned as NSF. On October 4, 2019 a payment of \$1100.00 was made towards the rent. The \$1100.00 paid on October 4, 2019 shall be applied towards August's rent leaving \$1100.00 owing for September 2019. 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 \$795.52 ($\$1100.00 \times 12 \text{ months} = \$13,200.00 \div 365 \text{ days} = \$36.16 \text{ per day} \times 22 \text{ days} = \795.52). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$36.16 beginning on October 23, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

- 14. The landlord's claim for rent succeeds as per the following:
 - a. Rent owing for September 2019\$1100.00
 - b. Rent owing for October 1 - 22, 2019\$795.52
 - c. Total rent owing\$1895.52

 - d. A daily rate beginning October 23, 2019..... \$36.16

Issue 2: Vacant Possession of the Rental Premises

15. 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

16. The landlord testified that a termination notice (LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was posted on the door of the rental unit on September 26, 2019 to vacate on October 7, 2019 because they had not received the rent for the months of August and September 2019. To the date of the hearing the tenant still resides in the unit.

Analysis

17. 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 14 above, the rent is in arrears since August 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 tenant as per sections 19.(4) and 34 of the Act. The notice was served in accordance with Section 35 of the Act.

Decision

18. 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

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

Analysis

20. The rental arrears has been established in paragraph 14 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st 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 August 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

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

Issue 4: Payment for NSF charges - \$90.00

20. The landlord testified that they were charged \$30.00 by their bank on August 8, 2019 and again on September 9, 2019 due to the non-sufficient funds in the tenant's account for a total of \$60.00. They then charged the tenant an extra \$15.00 per NSF charge for a total of \$30.00. The total amount for the NSF charges is \$90.00 ($\$60.00 + \$30.00 = \90.00).

Analysis

21. Under the authority of section 15.(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. As the landlord was charged \$30.00 on August 8, 2019 and again on September 9, 2019 because the pre authorized payments were returned as NSF, the claim succeeds in the amount of \$60.00 ($\$30.00 \times 2 = \60.00).

Decision

22. The landlord's claim for NSF charges succeeds in the amount of \$60.00.

Issue 4: Application for Security Deposit

20. 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

21. The landlord testified a \$1025.00 security deposit was paid on November 27, 2015.

Analysis

22. A \$1025.00 security deposit was paid in November 2017. Under section 14.(1)(b) a landlord shall not demand more than $\frac{3}{4}$'s of a month's rent for the security deposit. As the rent is \$1100.00; the maximum amount the landlord can collect for the security deposit is \$825.00 ($\$1100.00 \times 75\% = \825.00). The landlord collected \$200.00 ($\$1025.00 - \$825.00 = \200.00) more than is permitted; the overpayment shall be applied towards the rent. Also, the landlord shall retain the \$825.00 security deposit as they have been successful in their claim for the payment of rent, late fees and NSF charges.

Decision

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

Issue 4: Hearing Expenses - \$70.00

24. 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

25. The landlord paid an application filing fee in the amount of \$20.00 and \$50.00 (LL #4) to have the application for dispute resolution served on the tenant for a total of \$70.00. The landlord is seeking these costs.

Analysis

26. The costs the landlord incurred to make the application and to have the application served are considered reasonable expenses 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 \$70.00.

Decision


27. The tenant shall pay the landlord's hearing expenses in the amount of \$70.00.

Summary of Decision

28. The landlord is entitled to the following:

- a) Payment of rent..... \$1895.52
- b) Late fees \$75.00
- c) Payment of NSF charges \$60.00
- d) Hearing expenses \$70.00
- e) **LESS: Overpayment of the security deposit**.....(200.00)
- f) **LESS: Security deposit** (825.00)
- g) **Total owing to the Landlord****\$1075.52**
- h) Vacant Possession of the rented premises
- i) A daily rate of rent in the amount of \$36.16 beginning October 23, 2019 and continuing until the day the landlord obtains possession of the rental unit.
- j) 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