

## Residential Tenancies Tribunal

Decision 19-0727-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:20 a.m. on October 2, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [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 discontinued the claim for vacant possession and the validity of the termination notice. He amended the claim for payment of rent from \$1260.00 to \$1800.00.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the number 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 notice of this hearing was electronically served on September 20, 2019 and the tenant has had 11 days to provide a response. The tenant provided her e-mail address on the rental agreement. A copy of the e-mail along with the rental agreement were submitted with the affidavit. 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. Payment of rent in the amount of \$1800.00;
  - b. Late fees in the amount of \$75.00;
  - c. 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 15 and 19 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 - \$1800.00**

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 testified that the tenant moved into the unit on May 15, 2019 for a one year term with rent set at \$1050.00 per month due on the 1<sup>st</sup> of each month. There was no rent charged for the month of May 2019. Rent was paid through interac e-transfer. He testified that he received June's rent and on July 9, 2019 he received \$1000.00 towards July's rent which was the last time he received any monies from the tenant. A termination notice under section 19 was sent by e-mail to the tenant on August 21, 2019 to vacate on September 1, 2019. A copy of the termination notice was also posted on the door. The landlord took back possession of the unit on September 20, 2019 after posting a notice of abandonment on the door of the unit.

12. The landlord submitted into evidence a copy of the rental agreement (LL #1), a copy of the termination notice (LL #2); and copies of the interac e-transfers (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 the tenant moved into the unit on May 15, 2019 and the landlord did not start charging rent until June 1, 2019. The landlord received the rent for June and on July 9, 2019 \$1000.00 was paid towards July’s rent. This was the last time he received money from the tenant. I also find the landlord served a termination notice on the tenant on August 21, 2019 to vacate on September 1, 2019 and the landlord took back possession of the unit on September 20, 2019 after he posted a notice of abandonment. He is seeking rent up to September 20, 2019. The landlord is entitled to \$50.00 for July’s rent; \$1050.00 for August’s rent and \$690.40 ( $\$1050.00 \times 12 \text{ months} = \$12,600.00 \div 365 \text{ days} = \$24.52 \text{ per day} \times 20 \text{ days} = \$690.40$ ) for the period September 1 – 20, 2019 for a total of \$1790.40.

**Decision**

14. The landlord’s claim for rent succeeds as per the following:
- a. Rent owing for July 2019 .....\$50.00
  - b. Rent owing for August 2019 .....\$1050.00
  - c. Rent owing for September 1 – 20, 2019 .....\$690.40
  - d. Total rent owing .....\$1790.40

**Issue 2: Late fees**

**Landlord Position**

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

**Analysis**

16. 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 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 July 2019 the late fees have exceeded the maximum amount of \$75.00.

**Decision**

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

**Issue 3: Hearing Expenses - \$20.00**

18. 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

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

**Analysis**

20. 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 is successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

**Decision**


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

**Summary of Decision**

22. The landlord is entitled to the following:

a) Payment of rent .....	\$1790.40
b) Late fees .....	\$75.00
c) Hearing expenses .....	<u>\$20.00</u>
d) <b>Total owing to Landlords .....</b>	<b><u>\$1885.40</u></b>

October 16, 2019  
Date

  
Residential Tenancies Section