

## Residential Tenancies Tribunal

Decision 19-0736-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:20 a.m. on November 5, 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 by a conference call.
3. The respondent, [REDACTED], hereafter referred to as tenant1, attended the hearing. The respondent, [REDACTED], hereafter referred to as tenant2 did not attend the hearing.

### Preliminary Matters

4. The landlord discontinued the claim for compensation for inconvenience.
5. Tenant2 was not present or represented at the hearing. Prior to the hearing I called and was speaking with tenant2 but she disconnected the call. 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 the hearing was electronically served on tenant2 on September 18, 2019. The tenant has had 47 days to provide a response. The landlord submitted a copy of the e-mail sent on September 18, 2019 along with a response from the tenant. 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 \$700.00;
  - 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 - \$700.00**

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 tenants moved into the unit on February 22, 2019 for a one year term to begin on March 1, 2019. The rent was set at \$900.00 per month due on the 1<sup>st</sup> of each month. The rent was paid in full up to the end of June 2019. No rent was paid for the month of July 2019. In August 2019, 3 payments of \$500.00 each were received leaving a balance of \$300.00. In September 2 payments were received; \$500.00 on September 10, 2019 and \$450.00 on September 27, 2019 leaving a balance of \$250.00. In October a payment of \$450.00 was received on October 13, 2019 leaving a balance of \$700.00 owing up to the end of October 2019. He testified that tenant2 moved out in July 2019 but tenant1 is continuing with the lease agreement.

Tenant Position

- 12. Tenant1 testified that tenant2 vacated in July 2019 and she is staying on at the unit. She does not dispute the amount of rent owing up the end of October 2019.

**Analysis**

- 13. I have reviewed the testimony and evidence of the landlord and tenant1. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the two tenants moved into the unit in February 2019 for a one year term to start on March 1, 2019. Tenant2 moved out in July and tenant1 is still living in the unit. I also find that based on the rent ledger the tenants did not pay any rent during the month of July 2019. \$1500.00 was paid in August; \$950.00 was paid in September and \$450.00 was paid in October 2019 leaving a balance owing of \$700.00 up to the end of October 2019.

**Decision**

- 14. The landlord’s claim for rent succeeds as per the following:
  - a. Rent owing up to the end of October 2019.....\$700.00

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

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 was successful, the tenant is responsible to pay the landlord's hearing expenses in the amount of \$20.00.

**Decision**


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

**Summary of Decision**

22. The landlord is entitled to the following:

a) Payment of rent.....	\$700.00
b) Late fees .....	\$75.00
c) Hearing expenses .....	<u>\$20.00</u>
d) <b>Total owing to the Landlord .....</b>	<b><u>\$795.00</u></b>

April 15, 2020  
Date

  
Residential Tenancies Section