

## Residential Tenancies Tribunal

Decision 19-0737-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 11:20 a.m. on October 23, 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 application to include the payment of rent for the month of October in the amount of \$650.00.
5. [REDACTED] appeared as a witness for the landlord.
6. The tenant was not present or represented at the hearing. The landlord did not have a telephone number for the tenant. 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.

7. The affidavit of service submitted by the landlord shows that the application for dispute resolution was personally served on the tenant on October 4, 2019 and the tenant has had 18 days to provide a response. 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**

8. The landlord is seeking the following:
  - a. Vacant possession of the rental premises;
  - b. Payment of rent in the amount of \$650.00;
  - c. Hearing expenses.

### **Legislation and Policy**

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 10, 14, 19, 22, 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: Vacant Possession of the Rental Premises**

11. 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 22 of the Act where the tenant contravenes the Act by not carrying out repairs to the unit.

### **Landlord Position**

12. The landlord testified that the tenant moved into the unit on August 1, 2019 on a month to month tenancy with rent set at \$650.00 per month due on the 1<sup>st</sup> of each month. Around September 10, 2019 he had his maintenance employee serve the tenant with a request for repairs because the entrance door had been kicked in, the porch door was damaged and there were holes in the walls in the bedroom. The notice was not a proper notice so his maintenance employee reserved the request for repairs on September 17, 2019 to have the repairs carried out by September 20, 2019. When his employee went back to the unit on September 21, 2019, the tenant had not carried out the repairs. A termination notice (LL #3) under Section 22 of the *Residential Tenancies Act, 2018*, was given to the tenant on September 25, 2019 to vacate on October 1,

2019. The landlord submitted a photograph of the entrance door, the porch door and the living room (LL #2).

### Witness Position

13. [REDACTED], witness and the maintenance employee for the landlord, testified that he helped the previous tenant move out of the unit. When the previous tenant moved out there were no damages to the unit. On/or about August 31, 2019 the tenants living in the front of the house notified him that the police were at the tenant's unit. He went to the unit the next day, September 1, 2019. When he arrived at the unit the door was opened. When he went to go inside he noticed that the entrance door was damaged and when he got inside the porch door was also damaged. He took photographs of the doors. The landlord presented the photographs. [REDACTED] also testified that he served the tenant with the request for repairs on September 17, 2019 to have the repairs carried out by September 20, 2019. When he went back to the unit on September 21, 2019 the repairs were not carried out. He presented a photograph of the entrance door that was taken on September 21, 2019 (LL #5).

### **Analysis**

14. Section 22 is given when a landlord gives notice to the tenant to carry out repairs and the tenant does not carry out the repairs. I find that the witness's testimony is believable in that the damages to the entrance door and porch door were caused by the tenant or someone the tenant let into the unit. I also find the landlord gave the tenant a reasonable amount of time to have the repairs carried out but the tenant did not try to make the repairs. 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 22 and 34 of the Act. The notice was served in accordance with Section 35 of the Act.

### **Decision**

15. 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 2: Payment of rent - \$650.00**

16. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

17. The landlord testified that he received the rent for the months of August and September from Advanced Education Skills and Labour (AESL) on behalf of the tenant. He has not received any monies towards the rent for the month of October 2019. He said he deposited a cheque on August 30, 2019 from AESL for September’s rent for some of his tenants. The deposit slip listed the names of the tenants for which September’s rent was paid. The tenant’s name was on the list. The landlord submitted a copy of the deposit slip (LL #4).

**Analysis**

18. 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 was paid by AESL for the months of August and September 2019 and the landlord did not receive any monies towards the rent for the month of October 2019. Rent for the month of October can only be awarded up and including the day of the hearing (October 23, 2019). The amount of rent owing for October 1 – 23, 2019 is \$491.51 ( $\$650.00 \times 12 \text{ months} = \$7800.00 \div 365 \text{ days} = \$21.37 \text{ per day} \times 23 \text{ days} = \$491.51$ ). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$21.37 beginning on October 24, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

**Decision**

19. The landlord’s claim for rent succeeds as per the following:
- a. Rent owing for October 1 - 23, 2019 .....\$491.51
  - b. A daily rate beginning October 24, 2019..... \$21.37

**Issue 3: 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 \$325.00 security deposit was paid on August 1, 2019.

**Analysis**

22. A \$325.00 security deposit was paid in August 2019. The landlord shall retain the \$325.00 security deposit as they have been successful in their claim for the payment of rent.

**Decision**

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

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

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. The landlord is seeking this cost.

**Analysis**

26. 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**

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


**Summary of Decision**

28. The landlord is entitled to the following:

- a) Payment of rent.....\$491.51
- b) Hearing expenses .....\$20.00

- c) **LESS: Security deposit** ..... (325.00)
- d) **Total owing to the Landlord** ..... **\$186.51**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$21.37 beginning October 24, 2019 and continuing until the day the landlord obtains possession of the rental unit.
- g) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

November 1, 2019  
Date

  
Residential Tenancies Section