

## Residential Tenancies Tribunal

Decision 19-0759-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 11:30 p.m. on October 16, 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 as the tenant vacated on September 28, 2019.
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 him. 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 sent by registered mail and the tenant signed for the mail on September 24, 2019. The tenant has had 21 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 his absence.

### **Issues before the Tribunal**

7. The landlord is seeking the following:
  - a. Payment of rent in the amount of \$700.00;
  - b. 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 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 tenant lived in the unit for 3 months. The rent was set at \$700 per month due on the 1<sup>st</sup> of each month. The rent was paid in cash for 2 months but the rent for the month of September 2019 was not paid. A termination notice under section 19 of Act was posted on the door on September 7, 2019 to vacate on September 18, 2019. The tenant vacated on September 28, 2019. The landlord submitted a copy of the termination notice (LL #1).

### **Analysis**

12. 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 landlord served a termination notice on the tenant on September 7, 2019 because the rent was not paid. I accept the landlord's testimony that

the rent was not paid for the month of September 2019 and the tenant vacated on September 28, 2019. The tenant shall pay the rent for the month of September 2019 in the amount of \$700.00.

### **Decision**

13. The landlord's claim for the payment of rent for the month of September 2019 succeeds in the amount of \$700.00.

### **Issue 2: Application for Security Deposit**

14. 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

15. The landlord testified that the tenant paid a \$350.00 security deposit before he moved into the unit.

### **Analysis**

16. A \$350.00 security deposit was paid. As the landlord has been successful in his claim for the payment of rent, he shall retain the \$350.00 security deposit as outlined in this decision and order.

### **Decision**

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

### **Issue 3: Hearing Expenses - \$32.08**

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 a \$20.00 application filing fee and \$12.08 for registered mail. The landlord is seeking these costs.

**Analysis**

20. The costs the landlord incurred for the application fee and the registered mail 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 cover the cost of the hearing expenses in the amount of \$32.08.

**Decision**

21. The tenant shall pay the landlord’s hearing expenses in the amount of \$32.08.

**Summary of Decision**

22. The landlord is entitled to the following:

a) Payment of rent .....	\$700.00
b) Hearing expenses .....	<u>\$32.08</u>
c) <b>LESS: Security deposit</b> .....	<u><b>(\$350.00)</b></u>
d) <b>Total owing to the landlord</b> .....	<b>\$382.08</b>

January 9, 2020  
Date

  
Residential Tenancies Section