

Residential Tenancies Tribunal

Decision 19-0769-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:15 a.m. on October 29, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord amended the claim to reflect the company name as [REDACTED] and the claim for payment of rent from \$250.00 to \$810.00.
5. The tenant was not present or represented at the hearing. 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 personally served on the tenant on October 4, 2019 and the tenant has had 24 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. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$810.00;
 - 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 14, 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 - \$810.00

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 August 1, 2019 on a month to month tenancy with rent set at \$550.00 per month due on the 1st of each month. He received two payments from the tenant; \$540.00 on August 5, 2019 and \$300.00 on September 16, 2019 leaving a balance owing of \$260.00 up to the end of September 2019. The landlord submitted a copy of the rent ledger (LL #2).

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 the tenant made two payments towards the rent; \$540.00 was paid on August 5, 2019 leaving \$10.00 owing for August 2019 and \$300.00 was paid on September 16, 2019 leaving \$250.00 owing for September 2019. Rent for the month of October can only be awarded up and including the day of the hearing (October 29, 2019). The amount of rent owing for October 1 – 29, 2019 is \$524.32 ($\$550.00 \times 12 \text{ months} = \$6600.00 \div 365 \text{ days} = \$18.08 \text{ per day} \times 29 \text{ days} = \524.32). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$18.08 beginning on October 30, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

- 13. The landlord’s claim for rent succeeds as per the following:
 - a. Rent owing for August 2019 \$10.00
 - b. Rent owing for September 2019..... \$250.00
 - c. Rent owing for October 1 – 29, 2019 \$524.32
 - d. Total rent owing..... \$784.32

 - e. A daily rate beginning October 30, 2019 \$18.08

Issue 2: Vacant Possession of the Rental Premises

- 14. 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

- 15. The landlord testified that a termination notice (LL #1) under Section 19 of the *Residential Tenancies Act, 2018*, was left underneath the tenant’s door on September 17, 2019 to vacate on September 28, 2019 because the rent had been in arrears since August 2019. To the date of the hearing the tenant still resides in the unit.

Analysis

- 16. 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 13 above, rent was in arrears when the termination notice was served on the tenant and the tenant did not pay the outstanding rent. 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

- 17. 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: Application for Security Deposit

18. 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

19. The landlord testified a \$225.00 security deposit was paid on August 5, 2019.

Analysis

20. A security deposit was paid in August 2019. As the landlord has been successful in his claim for the payment of rent, he shall retain the \$225.00 security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$20.00

22. 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

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

Analysis

24. 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 cover the cost of the hearing expenses in the amount of \$20.00.

Decision


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

Summary of Decision

26. The landlord is entitled to the following:

- a) Payment of rent.....\$784.32
- b) Hearing expenses\$20.00
- c) **LESS: Security deposit** **(225.00)**
- d) **Total owing to Landlord**.....**\$579.32**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$18.08 beginning October 30, 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 6, 2019
Date


Residential Tenancies Section