

## Residential Tenancies Tribunal

Decision 19-0802-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 1:10 p.m. on November 7, 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, participated in the hearing.

### Preliminary Matters

4. [REDACTED], witness for the landlord, attended the hearing.
5. [REDACTED], witness for the tenant, attended the hearing by conference call.

### Issues before the Tribunal

6. The landlord is seeking the following:
  - a. Vacant possession of the rental premises;
  - b. Payment of rent in the amount of \$1800.00;
  - c. Hearing expenses.

### Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.

8. 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 - \$1600.00**

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

#### Landlord Position

10. The landlord testified that the tenant moved into the unit in July 2019 on a verbal month to month tenancy with rent set at \$800.00 per month due on the 1<sup>st</sup> of each month. Rent was paid for the months of July, August and September 2019 but no rent was paid for the months of October and November 2019. Later in his testimony, he testified that on October 15, 2019 when he was speaking with the tenant on the telephone the tenant offered him \$400.00 but he refused the money.

#### Witness Position

11. [REDACTED], witness for the landlord, testified that the tenant paid her cash for the rent for the months of July – September 2019. He never offered her any monies towards the rent for the months of October and November 2019.

#### Tenant Position

12. The tenant testified that he did not pay the rent for the months of October and November 2019 but when he was speaking with the landlord on the telephone on October 15, 2019 he offered some money but the landlord refused. He further testified that he went to the witness's unit with a friend on a couple of occasions to pay the rent but the witness refused the money.

#### Witness Position

13. [REDACTED], witness for the tenant, testified that she went to the door of the landlord's witness multi times with the tenant when he offered the full rent but the money was refused.

### **Analysis**

14. I have reviewed the testimony and evidence of the landlord, the tenant and the witnesses and I have determined that there is one issue that needs to be

addressed; is rent owing. I find that the tenant acknowledges that the rent has not been paid for the months of October and November 2019 but he offered some money to the landlord on October 15, 2019 towards the rent. The landlord refused. I also find that the testimony of the landlord's witness was more creditable than the testimony of the tenant's witness with regard to the tenant offering the full rent for the month of October 2019. Therefore, the claim for rent for the month of October succeeds in the amount of \$800.00. Rent for the month of November can only be awarded up and including the day of the hearing (November 7, 2019). The amount of rent owing for November 1 – 7, 2019 is \$184.10 ( $\$800.00 \times 12 \text{ months} = \$9600.00 \div 365 \text{ days} = \$26.30 \text{ per day} \times 7 \text{ days} = \$184.10$ ). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$26.30 beginning on November 8, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

**Decision**

15. The landlord's claim for rent succeeds as per the following:

a. Rent owing for October 2019 .....	\$800.00
b. Rent owing for November 1 – 7, 2019 .....	<u>\$184.10</u>
c. Total rent owing .....	\$984.10
d. A daily rate beginning November 8, 2019.....	\$26.30

**Issue 2: Vacant Possession of the Rental Premises**

16. 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

17. The landlord testified that a termination notice (LL #1) under Section 19 of the *Residential Tenancies Act, 2018*, was posted on the door of the rental unit on October 15, 2019 to vacate on October 26, 2019 because he had not received the rent for the month of October 2019. The tenant still resides in the unit.

Tenant Position

18. The tenant testified that he received the termination notice.

## **Analysis**

19. 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 15 above, rent is in arrears for October and no monies have been paid towards the rent for November 2019. 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**

20. 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**

21. 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

22. The landlord testified that the tenant paid a \$400.00 security deposit in July 2019.

### Tenant Position

23. The tenant testified that he paid a \$400.00 security deposit.

## **Analysis**

24. A security deposit was paid in the amount of \$400.00. As the landlord has been successful in the claim for the payment of rent, he shall retain the \$400.00 security deposit as outlined in this decision and order.

## **Decision**

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

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

26. 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

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

**Analysis**

28. 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**


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

**Summary of Decision**

30. The landlord is entitled to the following:

- a) Payment of rent..... \$984.10
- b) Hearing expenses ..... \$20.00
- c) **Less the security deposit**..... **(400.00)**
- d) **Total owing to Landlord**..... **\$604.10**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$26.30 beginning November 8, 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 13, 2019  
Date

  
Residential Tenancies Section