

Residential Tenancies Tribunal

Decision 19-0845-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 p.m. on December 2, 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 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.
5. The affidavit of service submitted by the landlord shows that the notice of this hearing was sent by registered mail. The tenant signed for the registered mail on November 19, 2019 and the tenant has had 12 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.

6. The landlord amended the claim for payment of rent from \$422.34 to \$1831.84.

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 \$1831.84;
 - c. Late fees in the amount of \$75.00;
 - d. NSF charges in the amount of \$25.00;
 - e. 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, 15, 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 - \$1831.84

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 September 1, 2019 for a one year term with rent set at \$875.00 per month due on the 1st of each month. On August 29, 2019 a payment of \$77.00 was paid by Newfoundland Labrador Housing on behalf of the tenant for September's rent. The remainder of the rent was paid on September 5, 2019. On September 26, 2019 Newfoundland Labrador Housing paid \$266.00 towards the rent for October. The balance of \$609.00 was paid through a pre-authorized payment on October 1, 2019. The pre-authorized payment was returned as NSF on October 3, 2019. Advanced Education Skills and Labour (AESL) made 2 payments; one in the amount of \$211.66 on October 18, 2019 and the other in the amount of \$74.50 on October 31, 2019. On October 31, 2019 Newfoundland Labrador Housing made a payment of \$74.50 leaving a balance of \$56.84. This was the last payment received towards the rent. The landlord submitted into evidence a copy of the rent ledger (LL #3).

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 has not received any payments towards the rent since October 31, 2019. At that time there was a balance of \$56.84. Therefore, \$56.84 is owed for October 2019 and \$875.00 is owed for November 2019. Rent for the month of December can only be awarded up and including the day of the hearing (December 2, 2019). The amount of rent owing for December 1 – 2, 2019 is \$57.54 ($\$875.00 \times 12 \text{ months} = \$10,500.00 \div 365 \text{ days} = \$28.77 \text{ per day} \times 2 \text{ days} = \57.54). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$28.77 beginning on December 3, 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 October 2019\$56.84
- b. Rent owing for November 2019\$875.00
- c. Rent owing for December 1 - 2, 2019\$57.54
- d. Total rent owing.....\$989.38

- e. A daily rate beginning December 3, 2019\$28.77

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 #2) under Section 19 of the *Residential Tenancies Act, 2018*, was posted on the door of the rental unit on October 17, 2019 to vacate on October 30, 2019 because the full amount of rent had not been paid for the month of October 2019. 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, the rent has been in arrears since October 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

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: Late fees - \$75.00

Landlord Position

18. The landlord testified she is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since October 2019.

Analysis

19. The rental arrears has been established in paragraph 13 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st 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 October 2019, the late fees have exceeded the maximum of \$75.00.

Decision

20. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: NSF Charges - \$25.00

21. The landlord testified that they incurred a fee of \$25.00 because the pre-authorized payment was returned as non-sufficient funds (NSF).

Analysis

22. The landlord was charged \$25.00 because the pre-authorized payment was returned as NSF. Section 15.(2) allows the landlord to charge a tenant a fee in the same amount as the fee charged to the landlord by the financial institution when a cheque is returned as NSF.

Decision

23. The claim for NSF charges succeeds in the amount of \$25.00.

Issue 5: Application for Security Deposit

24. 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

25. The landlord testified a \$437.50 security deposit was paid on August 28, 2019.

Analysis

26. A security deposit was paid in August 2019. As the landlord has been successful in the claim for the payment of rent, late fees and a fee for NSF charges, they shall retain the \$437.50 security deposit as outlined in this decision and order.

Decision

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

Issue 6: Hearing Expenses - \$32.00

28. 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

29. The landlord paid an application filing fee in the amount of \$20.00 and \$12.00 for registered mail for a total of \$32.00. The landlord is seeking these costs.

Analysis

30. The cost the landlord incurred to make the application and to send the application by 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 \$32.00.

Decision

31. The tenant shall pay the landlord's hearing costs in the amount of \$32.00.

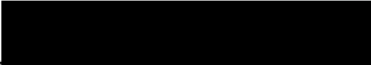
Summary of Decision

32. The landlord is entitled to the following:

- a) Payment of rent.....\$989.38
- b) Late fees \$75.00
- c) NSF charges \$25.00
- d) Hearing expenses \$32.00
- e) **LESS: Security deposit** **(\$437.50)**
- f) **Total owing to Landlord**..... **\$683.88**
- g) Vacant Possession of the rented premises
- h) A daily rate of rent in the amount of \$28.77 beginning December 3, 2019 and continuing until the day the landlord obtains possession of the rental unit.
- i) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

December 4, 2019

Date


Residential Tenancies Section