

## Residential Tenancies Tribunal

Decision 19-0851-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 11:20 a.m. on November 26, 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 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 the hearing was electronically served on the tenant on November 14, 2019. The tenant has had 11 days to provide a response. The landlord submitted a copy of the text message along with copies of text messages between himself and the tenant prior to November 14, 2019. 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 absent.

## Issues before the Tribunal

6. The landlord is seeking the following:
  - a. Payment of rent in the amount of \$4400.00;
  - b. 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 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 - \$4400.00

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 on April 1, 2010 on a month to month tenancy with rent set at \$1100.00 per month due on the 1<sup>st</sup> of each month. The rent for was paid in full up to March 2019. April's rent was paid on May 1, 2019, May's rent was paid on August 13, 2019 and June's rent was paid on September 20, 2019. Since September 20, 2019 he has not received any monies from the tenant. A termination notice under section 19 of the *Residential Tenancies Act* was served on the tenant on October 24, 2019 to vacate on November 3, 2019. The tenant vacated on that date. The landlord presented copies of text messages between himself and the tenant re: payment of rent (LL #2).

## Analysis

11. I have reviewed the testimony and the evidence of the landlord. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the rent was paid in full up to March 2019. The rent for April, May and June 2019 was paid but it was not paid on time. I also find that the landlord did not receive the rent for the months of July – October 2019. A termination notice was served on the tenant in October and the tenant vacated on November 3, 2019.

**Decision**

- 12. The landlord’s claim for rent succeeds as per the following:
  - a. Rent owing for July 2019.....\$1100.00
  - b. Rent owing for August 2019.....\$1100.00
  - c. Rent owing for September 2019.....\$1100.00
  - d. Rent owing for October 2019 .....\$1100.00
  - e. Total owing to the landlord .....\$4400.00

**Issue 2: Application for Security Deposit**

- 13. 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

- 14. The landlord testified that the tenant paid a \$550.00 security deposit on April 1, 2010.

**Analysis**

- 15. A \$550.00 security deposit was paid in April 2010. The landlord shall retain the security deposit as he has been successful in the claim for the payment of rent. The interest rate on security deposits for the period 2010 - 2019 is 0%.

**Decision**

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

**Issue 3: Hearing Expenses - \$20.00**

- 17. 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

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

**Analysis**

- 19. 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**


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

**Summary of Decision**

- 21. The landlord is entitled to the following:

a) Payment of rent.....	\$4400.00
b) Hearing expenses .....	<u>\$20.00</u>
c) (Less the security deposit.....)	(550.00)
d) <b>Total owing to the Landlord .....</b>	<b><u>\$3870.00</u></b>

April 15, 2020  
Date

  
Residential Tenancies Section