

Residential Tenancies Tribunal

Decision 19-0892-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on January 13, 2020 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 amended the application to include payment of rent for the month of January 2020.
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 electronically to the tenant on January 2, 2020 and the tenant has had 10 days to provide a response. The landlord submitted a copy of the e-mail along with a copy of the rental agreement. The rental agreement contains the tenant's e-mail address. 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 \$675.00;
 - 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 and 24 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 - \$675.00

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 October 2, 2019 on a month to month tenancy with rent set at \$675.00 per month due on the 1st of each month. Rent was paid for the months of October – December 2019 by a third party, Advanced Education Skills and Labour (AESL). On November 14, 2019 the landlord and tenant signed a discontinuance agreement that the tenant would vacate on December 30, 2019. The tenant has not vacated the unit and he has not paid any monies towards the rent for the month of January 2020. The landlord submitted copies of the stubs for the payment of rent for the months of November and December 2019 (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 the rent was paid by AESL for the months of October – December 2019. The tenant signed a discontinued agreement to vacate on December 30, 2019. The tenant has not vacated the unit and he has not paid any monies towards the rent for the month of January. Rent for the month of January 2020 can only be awarded up and including the day of the hearing (January 13, 2020). The amount of rent owing for January 1 – 13, 2020 is \$288.47 ($\$675.00 \times 12 \text{ months} = \$8,100.00 \div 365 \text{ days} = \$22.19 \text{ per day} \times 13 \text{ days} = \288.47). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$22.19 beginning on January 14, 2020 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 January 2020\$288.47
 - b. A daily rate beginning January 14, 2020.....\$22.19

Issue 2: Vacant Possession of the Rental Premises

Landlord Position

14. The landlord testified that on November 11, 2019 a termination notice was posted on the door of the rental unit. The notice was under section 24 (interference with peaceful enjoyment) of the Act to vacate on November 16, 2019. On November 14, 2019 both she and the tenant signed a Discontinuance Agreement that the tenant would vacate the unit on December 30, 2019. The tenant has not vacated as of the date of the hearing. The landlord submitted a copy of the Discontinuance Agreement (LL #2).

Analysis

15. Section 18.(5) states that a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date. I find that the landlord and tenant signed a discontinuance agreement on November 14, 2019 for the tenant to vacate on December 30, 2019. The tenant did not vacate on that date and is still residing in the unit. The claim for vacant possession succeeds.

Decision

16. 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

17. 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

18. The landlord testified a \$488.00 security deposit was paid in October 2019.

Analysis

19. A 488.00 security deposit was paid in October 2019. As the landlord has been successful in her claim for the payment of rent she shall retain \$308.47 from the security deposit as outlined in this decision and order.

Decision

20. The landlord shall retain \$308.47 from the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

21. 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

22. The landlord paid the \$20.00 application filing fee. The landlord is seeking this cost.

Analysis

23. 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


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

Summary of Decision

25. The landlord is entitled to the following:

- a) Payment of rent\$288.47
- b) Hearing expenses\$20.00
- c) **LESS: Security deposit** **(\$308.47)**
- d) **Total owing to Landlord**..... **0**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$22.19 beginning January 14, 2020 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.

January 16, 2020
Date


Residential Tenancies Section