

Residential Tenancies Tribunal

Decision 19-0917-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on January 16, 2020 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 landlord amended the claim for the payment of rent from \$2022.00 to \$2847.00.
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 personally served on the tenant on December 9, 2019 and the tenant has had 37 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 \$2847.00;
 - c. Late fees in the amount of \$75.00;
 - d. 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 - \$2847.00

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 for a one year term with rent set at \$825.00 per month due on the 1st of each month. The rent for August 2019 was paid on July 30, 2019. Rent for September was paid in 4 installments; \$40.50 was paid on August 2, 2019; \$206.25 was paid on August 14, 2019; \$206.25 was paid on August 30, 2019 and \$412.50 was paid on September 4, 2019 leaving a credit of \$40.50. Two payments of \$206.26 were made on October 1, 2019 towards October's rent leaving a balance of \$372.00. Since the 2 payments were made on October 1, 2019 they have not received any monies from the tenant. The landlord submitted a copy of the rent ledger for the period July 30, 2019 – January 2, 2020 (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 in full for the months of August and September 2019. \$453.00 was paid towards October's rent leaving a balance of \$372.00 and no monies have been paid towards the rent for the months of November 2019 – January 2020. Rent for the month of January can only be awarded up and

including the day of the hearing (January 16, 2020). The amount of rent owing for January 1 - 16, 2020 is \$432.80 ($\$825.00 \times 12 \text{ months} = \$9900.00 \div 366 \text{ days} = \$27.05 \text{ per day} \times 16 \text{ days} = \432.80). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$27.05 beginning on January 17, 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 October 2019	\$372.00
b. Rent owing for November 2019.....	\$825.00
c. Rent owing for December 2019.....	\$825.00
d. Rent owing for January 1 – 16, 2020	<u>\$432.80</u>
e. Total rent owing.....	\$2454.80
f. A daily rate beginning January 17, 2020	\$27.05

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 posted on the door of the rental unit on December 2, 2019 to vacate on December 14, 2019 because they had not received any monies towards the rent since October 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, 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 they are 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 amount of \$75.00.

Decision

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

Issue 4: 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 a \$372.00 security deposit was paid on July 30, 2019.

Analysis

23. A security deposit was paid in July 2019. As the landlord has been successful in the claim for the payment of rent and late fees, they shall retain the \$372.00 security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$20.00

25. 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

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

Analysis

27. 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

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


Summary of Decision

29. The landlord is entitled to the following:

- a) Payment of rent..... \$2454.80
- b) Late fees \$75.00
- c) Hearing expenses \$20.00
- d) **LESS: Security deposit** **(\$372.00)**
- e) **Total owing to Landlord**..... **\$2177.80**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$27.05 beginning January 17, 2020 and continuing until the day the landlord obtains possession of the rental unit.

h) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

January 30, 2020
Date


Residential Tenancies Section