

## Residential Tenancies Tribunal

Decision 20-0034-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 11:05 a.m. on February 11, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing by conference call.

### Preliminary Matters

4. The landlords amended the claim for the payment of rent from \$1000.00 to \$2375.00.

### Issues before the Tribunal

5. The landlords are seeking the following:
  - a. Vacant possession of the rental premises;
  - b. Payment of rent in the amount of \$2375.00;
  - c. Hearing expenses.
6. The tenants are seeking the following:
  - a. Validity of the termination notice;
  - 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, 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 - \$2375.00**

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 landlords testified that the tenants moved into the unit the end of August 2016 with rent set at \$1375.00 per month due on the 1<sup>st</sup> of each month. Rent for the period September 2016 – March 2017 was paid on time. The rent for the period April 2017 – August 2018 was paid by the end of each month. Rent for the period September 2018 – April 2019 was paid on time. The rent for May - November 2019 was paid by the end of each month. December's rent was paid in full by January 6, 2020. Also on January 6, 2020 \$375.00 was paid towards January's rent. Since receiving the rent on January 6, 2020 they have not received any monies.
11. Landlord1 testified that tenant1 agreed to send some money by interac e-transfer on January 11, 2020 but the tenant never sent the money. At no time did the tenants send money through e-transfer and they refused the money. In support of the claim, the landlords submitted a copy of the rent ledger (LL #2) and a copy of the text messages between landlord1 and tenant1 (LL #3).

### Tenant Position

12. The tenants acknowledge that \$1000.00 is owed for January 2020 and they have not paid any monies towards the rent for February 2020. Tenant1 testified that he offered to send money to the landlords for the remainder of the January but landlord1 told him that they still want them to vacate. He never sent the money.

### Analysis

13. I have reviewed the testimony and evidence of the landlords and tenants. I have determined that there is one issue that needs to be addressed; is rent

owing. I find that the last time the tenants paid rent was on January 6, 2020. They paid the balance for December 2019 and \$375.00 towards the rent for January 2020 leaving a balance of \$1000.00. Rent for February 2020 can only be awarded up and including the day of the hearing (February 11, 2020). The amount of rent owing for February 1 - February 11, 2020 is \$495.88 ( $\$1375.00 \times 12 \text{ months} = \$16,500.00 \div 366 \text{ days} = \$45.08 \text{ per day} \times 11 \text{ days} = \$495.88$ ). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$45.08 beginning on February 12, 2020 and continuing until the day the landlords obtain vacant possession of the rented premises.

## Decision

14. The landlords' claim for rent succeeds as per the following:

- a. Rent owing for January 2020 ..... \$1000.00
- b. Rent owing for February 1 - 11, 2020..... \$495.88
- c. Total rent owing..... \$1495.88
  
- d. A daily rate beginning February 12, 2020 ..... \$45.08

## Issue 2: Vacant Possession of the Rental Premises/Validity of the Notice

15. 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

- 16. The landlords testified that a termination notice (LL #1) under Section 19 of the *Residential Tenancies Act, 2018*, was posted on the door of the unit on January 7, 2020 to vacate on January 18, 2020 because they had not received the full amount of rent for the month of January 2020. To the date of the hearing the tenants still reside in the unit.
  
- 17. Landlord1 testified that prior to serving the notice on January 7, 2020 they had served 2 termination notices under section 19 of the Act. One was served in May 2019 and the other was served in November 2019. Each time the tenants paid up the rent.

### Tenant Position

18. The tenants acknowledge that the termination notice was posted on the door on January 7, 2020. They also acknowledge that the landlords had served 2 termination notices prior to the notice they received on January 7, 2020.

### **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 13 above, the rent was not paid in full for January 2020 when the termination notice was served. 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. The termination notice issued on January 7, 2020 is a valid notice.

### **Decision**

20. The landlords' claim for vacant possession succeeds. The landlords are 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 landlords testified a \$1000.00 security deposit was paid in August 2016.

### Tenant Position

23. The tenants acknowledges a \$1000.00 security deposit was paid.

## **Analysis**

24. A security deposit was paid in August 2016. As the landlords have been successful in the claim for the payment of rent, they shall retain the \$1000.00 security deposit as outlined in this decision and order.

## **Decision**

25. The landlords 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 landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

### Tenant Position

28. The tenants paid an application filing fee in the amount of \$20.00. The tenants are seeking this cost.

## **Analysis**

29. The cost the landlords and tenants 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 landlords' claim was successful, the tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

## **Decision**

30. The tenants shall pay the landlords' hearing expenses in the amount of \$20.00.

**Summary of Decision**

31. The landlords are entitled to the following:

- a) Payment of rent..... \$1495.88
- b) Hearing expenses ..... \$20.00
- c) **LESS: Security deposit** ..... (1000.00)
- d) **Total owing to the Landlords** ..... **\$515.88**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$45.08 beginning February 12, 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.

February 12, 2020  
Date

  
Residential Tenancies Section