

Residential Tenancies Tribunal

Decision 20-0066-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on February 25, 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 respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing.

Issues before the Tribunal

4. The landlords are seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$5200.00;
 - c. Hearing expenses.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
6. 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 - \$5200.00

7. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

8. The landlords testified that the tenant moved into the unit in May 2014 with the tenant and landlord1's Mom. She was part owner of the unit. Their Mom passed away in June 2018. In July 2018 the tenant agreed to rent the unit at a rate of \$1200.00 per month due on the 1st of each month. The rent included utilities; \$900.00 for rent and \$300.00 for utilities. Rent was paid in full up to the end of December 2018. In January 2019 the tenant fell into arrears and has carried the arrears each month. During the period March – June 2019 the tenant also rented the basement unit at a rate of \$600.00 per month. The amounts are reflected in the rent ledger. In August 2019 the power bill increased by \$50.00. In October 2019 the utilities decreased by \$140.00 as the Roger's account was cancelled. They testified that the last time they received rent was in October 2019 in the amount of \$1900.00 leaving a balance of \$720.00. The amount owing for the period November 2019 – February 2020 is \$4440.00 (\$1110.00 per month x 4 months = \$4440.00). The landlords submitted a copy of the rent ledger (LL #3).

Tenant Position

9. The tenant testified that he is not disputing the amount the landlords are claiming.

Analysis

10. I have reviewed the testimony and evidence of the landlords and the tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenant is not disputing the amount the landlords are claiming. Rent for February 2020 can only be awarded up and including the day of the hearing (February 25, 2020). The amount of rent owing for February 1 – 25, 2020 is \$688.59 ($\$1110.00 \times 12 \text{ months} = \$13,320.00 \div 366 \text{ days} = \$36.39 \text{ per day} \times 25 \text{ days} = \909.75). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$36.39 beginning on February 26, 2020 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

- 11. The landlords' claim for rent succeeds as per the following:
 - a. Rent owing for October 2019 \$720.00
 - b. Rent owing for November 2019..... \$1110.00
 - c. Rent owing for December 2019..... \$1110.00
 - d. Rent owing for January 2020 \$1110.00
 - e. Rent owing for February 1 - 25, 2020..... \$909.75
 - f. Total rent owing..... \$4959.75

 - g. A daily rate beginning February 26, 2020 \$36.39

Issue 2: Vacant Possession of the Rental Premises

- 12. 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

- 13. The landlords testified that a termination notice (LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was left in the tenant's mailbox on January 24, 2020 to vacate on February 4, 2020 because they had not received any rent since October 2019. To the date of the hearing the tenant still resides in the unit.

Tenant Position

- 14. The tenant acknowledges that he received the termination notice dated January 24, 2020.

Analysis

- 15. 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 11 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

16. 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

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.

Tenant Position

18. The tenant testified that he paid a \$1000.00 security deposit as per the lease agreement (T #1).

Landlord Position

19. The landlords acknowledge a \$1000.00 security deposit was paid in July 2018.

Analysis

20. A security deposit was paid in July 2018. 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

21. The landlords shall retain the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$33.44

22. 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

- 23. The landlords paid an application filing fee in the amount of \$20.00 and \$13.44 to send the application by registered mail. The landlords are seeking these costs.

Analysis

- 24. The cost the landlords 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 landlords' claim was successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$33.44.

Decision

- 25. The tenant shall pay the landlords' hearing expenses in the amount of \$33.44.

Summary of Decision

- 26. The landlords are entitled to the following:
 - a) Payment of rent..... \$4959.75
 - b) Hearing expenses \$33.44
 - c) **LESS: Security deposit** **(1000.00)**
 - d) **Total owing to Landlord**..... **\$3993.19**
 - e) Vacant Possession of the rented premises
 - f) A daily rate of rent in the amount of \$36.39 beginning February 26, 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.

March 3, 2020
Date


Residential Tenancies Section