

Residential Tenancies Tribunal

Decision 20-0068-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:05 a.m. on March 5, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as landlord1 participated in the hearing. The applicant, [REDACTED], hereafter referred to as landlord2 did not attend the hearing but was represented by landlord1.
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing through a conference call. He was represented by [REDACTED].

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 \$4800.00;
 - 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 - \$4800.00

- 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. Landlord1 testified that the tenant moved into the unit the middle of June 2018 for a one year term with rent set at \$1200.00 per month due on the 15th of each month. The rent was paid by a 3rd party deposit at their bank. The rent was paid in full up to October 2019. Since receiving the rent for October 15, 2019, they have not received any monies from the tenant. Landlord1 submitted a copy of the Scotiabank statement (LL #2).

Tenant Position

- 9. The tenant acknowledges that he has not paid the rent since October 2019.

Analysis

- 10. I have reviewed the testimony and evidence of the landlord 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 that the rent has not been paid since October 2019. Rent is owed in the amount of \$3600.00 for the period November 15, 2019 – February 14, 2020 (\$1200.00 x 3 months = \$3600.00). Rent for February 15, 2020 can only be awarded up and including the day of the hearing (March 5, 2020). The amount of rent owing for February 15 – March 5, 2020 is \$786.80 (\$1200.00 x 12 months = \$14,400.00 ÷ 366 days = \$39.34 per day x 20 days = \$786.80). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$39.34 beginning on March 6, 2020 and continuing until the day the landlords obtain vacant possession of the rented premises.

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

a. Rent owing for November 15, 2019.....	\$1200.00
b. Rent owing for December 15, 2019.....	\$1200.00
c. Rent owing for January 15, 2020	\$1200.00
d. Rent owing for February 15 – March 5, 2020	<u>\$786.80</u>
e. Total rent owing.....	\$4386.80
f. A daily rate beginning March 6, 2020.....	\$39.34

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. Landlord1 testified that a termination notice (LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was sent by e-mail on December 15, 2019 to vacate on January 15, 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.

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 November 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 \$600.00 security deposit in June 2018.

Landlord Position

19. Landlord1 acknowledged a \$500.00 security deposit was paid in June 2018.

Analysis

20. A security deposit was paid in June 2018. As the landlords have been successful in the claim for the payment of rent, they shall retain the \$500.00 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 - \$20.00

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. The landlords are seeking this cost.

Analysis

24. The cost the landlords 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 tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision


25. The tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Summary of Decision

26. The landlords are entitled to the following:

- a) Payment of rent..... \$4386.80
- b) Hearing expenses \$20.00
- c) **LESS: Security deposit** **(500.00)**
- d) **Total owing to Landlord**..... **\$3906.80**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$39.34 beginning March 6, 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 10, 2020
Date


Residential Tenancies Section