

Residential Tenancies Tribunal

Decision 20-0076-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on February 27, 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 Matter:

4. The application was amended to reflect [REDACTED] as landlord not [REDACTED].
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 February 12, 2020. The tenant has had 14 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 \$1930.00;
 - 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 - \$1930.00

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 July 1, 2019 for a one year term with rent set at \$965.00 per month due on the 1st of each month. Rent was paid through interac e-transfer for the months of July – December 2019. Since receiving December's rent on December 2, 2019 she has not received any monies from the tenant. The landlord submitted a copy of the rent ledger (LL #3) and a copy of the interac e-transfer dated December 2, 2019 (LL #4)

Analysis

12. I have reviewed the testimony and evidence of the landlord. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenant has not paid the rent for the months of January and February 2020.

Decision

13. The landlord’s claim for rent succeeds as per the following:

- a. Rent owing for January 2020 \$965.00
- b. Rent owing for February 2020 \$965.00
- c. Total rent owing..... \$1930.00

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 she hired [REDACTED] to serve a termination notice (LL #1) on the tenant for nonpayment of rent because the tenant had not paid the rent for the month of January 2020. The termination notice was posted on the door of the rental unit on January 13, 2020 with an effective date of January 24, 2020. She testified that she did not fill out the notice. The section quoted on the termination notice looks like it could be either 18 or 10. 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 January 2020. After reviewing the notice I find the section quoted on the termination notice is 18 not 19. As the termination notice did not quote the correct section, the termination notice is not a proper notice.

Decision

17. The landlord’s claim for vacant possession fails.

Issue 3: Late fees - \$75.00

Landlord Position

18. The landlord testified she is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since January 2020.

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 January 2020 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: 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 an application filing fee in the amount of \$20.00. 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 has been partially 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 expenses in the amount of \$20.00.

Summary of Decision

25. The landlord is entitled to the following:

- a) Payment of rent..... \$1930.00
- b) Late fees \$75.00
- c) Hearing expenses \$20.00
- d) **Total owing to Landlord..... \$2025.00**

March 3, 2020
Date


Residential Tenancies Section