

Residential Tenancies Tribunal

Decision 20-0139-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:25 p.m. on July 7, 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 through a conference call.
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 \$960.00 to \$845.00.
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 the number was no longer in service. 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 for the hearing scheduled for March 25, 2020 was served by Registered Mail on March 3, 2020. The notice of rescheduled hearing was sent by registered mail on June 16, 2020 and it was delivered on June 19, 2020. The tenant has had 17 days to provide a response to the rescheduled hearing. 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 her 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 \$845.00;
 - 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 - \$845.00

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 under a sublet. On February 1, 2020 a one year rental agreement was signed with rent set at \$960.00 per month due on the 1st of each month. She testified that the last time the tenant had a zero balance was on January 27, 2020. The tenant did not pay any rent in February 2020. Three payments were made in March 2020 totaling \$1200.00. No rent was paid in April 2020. Two payments were made in May 2020 totaling \$2085.00. Two payments were made in June 2020 totaling \$1030.00. One payment was made in July 2020 leaving a balance of \$845.00. The landlord submitted a copy of the rent ledger (LL #2).

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 that the rent was paid in full up to January 2020. The tenant fell into arrears in February 2020 and there was a balance at the end of each month. At the end of June 2020 the tenant had a balance of \$485.00. On July 6, 2020 the tenant made a payment of \$600.00; \$485.00 was applied towards June’s rent leaving \$115.00 ($\$600.00 - \$485.00 = \115.00) to be applied towards July’s rent. Rent due on July 1, 2020 can only be awarded up and including the day of the hearing (July 7, 2020). The amount of rent owing for July 1 -7, 2020 is \$105.36 ($\$960.00 \times 12 \text{ months} = \$11,520.00 \div 366 \text{ days} = \$31.48 \text{ per day} \times 7 \text{ days} = \$220.36 - \$115.00 = \105.36). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$31.48 beginning on July 8, 2020 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

- 13. The landlords’ claim for rent succeeds as per the following:
 - a. Rent owing for July 1 - 7, 2020.....\$105.36
 - b. A daily rate beginning July 8, 2020\$31.48

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 #2) under Section 19 of the *Residential Tenancies Act, 2018*, was posted on the door of the unit on February 13, 2020 to vacate on February 25, 2020 because they had not received the rent that was due on February 1, 2020. 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 12 above, the rent due on February 1, 2020 had not been paid when the 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.

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 February 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 February 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: 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 \$700.00 security deposit was paid on November 18, 2014. When the tenant sublet the unit she paid the previous tenant \$700.00 for the security deposit.

Analysis

23. A security deposit was paid in November 2014. As the landlord has been successful in the claim for the payment of rent and late fees, they shall retain \$211.41 of the security deposit as outlined in this decision and order.

Decision

24. The landlord shall retain \$211.41 of the security deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses - \$31.05

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 and \$11.05 to send the application by registered mail for a total of \$31.05. The landlord is seeking these costs.

Analysis

27. The costs the landlord 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 landlord's claim was successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$31.05.

Decision

28. The tenant shall pay the landlord's hearing expenses in the amount of \$31.05.


Summary of Decision

29. The landlord is entitled to the following:

The landlord is authorized to retain \$211.41 of the security deposit determined as follows:

- a) Payment of rent..... \$105.36
- b) Late fees \$75.00
- c) Hearing expenses \$31.05
- d) **Total** **\$211.41**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$31.48 beginning July 8, 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.

July 10, 2020
Date


Residential Tenancies Section