

Residential Tenancies Tribunal

Decision 19-0013-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:05 am on January 28, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.

Preliminary Matters

4. The application was amended to reflect the tenant's last name as [REDACTED].

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$900.00;
 - c. Late fees;
 - d. Hearing expenses.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case are Sections 19 and 34 of the Act and Policy 12-1: Recovery of Fees: Filing and Hearing Expenses.

Issue 1: Payment of rent - \$900.00

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

Landlord Position

- 9. Landlord stated that the tenant moved into the unit on September 16, 2018 on a month to month tenancy with rent set at \$750.00 per month due on the 1st of each month. A security deposit in the amount of \$400.00 was paid on September 14, 2018.
- 10. Landlord testified he received the rent for September, October and November 2018. On December 22, 2018 he received \$600.00 towards December’s rent leaving a balance of \$150.00. The landlord said he has not received any other monies towards the rent since December 22, 2018.

Tenant Position

- 11. Tenant acknowledges that the rent is owed in the amount of \$150.00 for December 2018 and \$750.00 for January 2019. He said he is not working.

Analysis

- 12. I have reviewed the testimony and evidence of the landlord and the tenant. The tenant acknowledges \$150.00 is owed for December and he has not paid the rent for January 2019. Rent for the month of January can only be awarded up and including the day of the hearing (January 28, 2019). The amount of rent owing for January is \$690.48 ($\$750.00 \times 12 \text{ months} = \$9000.00 \div 365 \text{ days} = \$24.66 \text{ per day} \times 28 \text{ days} = \690.48). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$24.66 beginning on January 29, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

- 13. The landlord’s claim for rent succeeds as per the following:
 - a. Rent owing for December 2018.....\$150.00
 - b. Rent owing for January 1 – 28, 2019\$690.48
 - c. Total arrears.....\$840.48

 - d. A daily rate beginning January 29, 2019\$ 24.66

Issue 2: Payment of Late fees - \$82.00

Landlord Position

14. The landlord is seeking payment of late fees as the rent has been in arrears since December 2018.

The landlord testified he is claiming late fees as he has not received the full rent for December 2018 and he has not received any rent for January 2019.

Tenant Position

15. The tenant did not make any comment on the payment of late fees.

Analysis

16. 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 December 2018 the late fee have exceeded the maximum amount of \$75.00.

Decision

17. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Vacant Possession of the Rental Premises

18. 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

19. The landlord is seeking vacant possession of the rental unit.
20. The landlord testified he served a termination notice (Exhibit L #2) under Section 19 of the *Residential Tenancies Act, 2018*, on January 8, 2019 to vacate on January 19, 2019 due to the fact a portion of the rent was not paid for December 2018 and he has not received any monies towards January's rent. To the date of the hearing the tenant still resides in the unit.

Tenant Position

21. The tenant testified he received the termination notice.

Analysis

22. 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 is in arrears. After reviewing the notice I find the notice allowed the required amount of time and contains all of the needed information to serve on the tenant as per sections 19.(4) and (34) of the Act. Also, the tenant acknowledges receiving the notice.

Decision

23. 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: Application for Security Deposit

24. 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.

Analysis

25. The tenant paid a security deposit in the amount of \$400.00 on September 14, 2018. As the landlord has been successful in his claim for rent he shall retain the security deposit as outlined in this decision and order.

Decision

26. The landlord shall retain the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

27. 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 and Hearing Expenses*.

Landlord Position

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

Analysis

29. The cost the landlord incurred to make the application is considered a reasonable expense as per Policy 12-1 Recovery of Fee: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF. Therefore, I find the tenant is responsible to cover the cost of the application filing fee.

Decision

30. The tenant shall pay the landlord's hearing costs in the amount of \$20.00.

Summary of Decision

31. The landlord is entitled to the following:

- a) Rent owing \$840.48
- b) Late fees \$75.00
- c) Hearing expenses \$ 20.00
- d) **LESS: Security deposit** **(\$400.00)**
- e) **Total Owing to Landlord**..... **\$535.48**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$24.66 beginning January 29, 2019 and continuing until the day the landlord obtains possession of the rental unit.
- h) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

February 5, 2019

Date



Residential Tenancies Section