

Residential Tenancies Tribunal

Decision 19-0020-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:10 am on January 29, 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.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$3200.00.

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 19 and 34 of the Act and Policy 12-1: Recovery of Fees: Filing and Hearing Expenses.

Issue 1: Payment of rent - \$3200.00

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. Landlord stated that the tenant moved into the unit on November 2, 2018 on a month to month tenancy with rent set at \$1600.00 per month due on the 2nd of each month. A security deposit in the amount of \$800.00 was paid on November 2, 2018.
9. Landlord testified that the tenant paid the rent for November on November 2, 2018. Since receiving the rent for November 2018 he hasn't received rent for two months.

Tenant Position

10. Tenant acknowledges that the rent is owed in the amount of \$1600.00 for each month for the months of December 2018 and January 2019. She said she was trying to make payments through Advanced Education, Skills and Labour (AESL). AESL were looking to pay the rent through direct deposit but the landlord did not feel comfortable in giving his banking information.

Analysis

11. I have reviewed the testimony and evidence of the landlord and the tenant. The tenant acknowledges rent in the amount of \$1600.00 is owed for each month for the months of December 2018 and January 2019. Rent for the month of January can only be awarded up and including the day of the hearing (January 29, 2019). The amount of rent owing for January is \$1525.40 ($\$1600.00 \times 12 \text{ months} = \$19,200.00 \div 365 \text{ days} = \$52.60 \text{ per day} \times 29 \text{ days} = \1525.40). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$52.60 beginning on January 30, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

12. The landlord's claim for rent succeeds as per the following:
 - a. Rent owing for December 2018.....\$1600.00
 - b. Rent owing for January 1 – 29, 2019\$1525.40
 - c. Total arrears.....\$3125.40

d. A daily rate beginning January 30, 2019\$52.60

Issue 2: Vacant Possession of the Rental Premises

13. 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

14. The landlord is seeking vacant possession of the rental unit.
15. The landlord testified he served a termination notice (Exhibit L #1) under section 19 of the *Residential Tenancies Act, 2018*, on January 4, 2019 to vacate on January 15, 2019 due to the fact the rent was not paid for December 2018 and he has not received any monies towards January's rent. The termination notice was sent by e-mail to the tenant. To the date of the hearing the tenant still resides in the unit.

Tenant Position

16. The tenant testified she received the termination notice by e-mail. She said she needs time to move out of the unit.

Analysis

17. 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 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

18. 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

19. 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

20. The tenant paid a security deposit of \$800.00 on November 2, 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

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

Summary of Decision

22. The landlord is entitled to the following:
- a) Rent owing \$3125.40
 - b) **LESS: Security deposit** **(\$800.00)**
 - c) **Total Owing to Landlord** **\$2325.40**
 - d) Vacant Possession of the rented premises
 - e) A daily rate of rent in the amount of \$52.60 beginning January 30, 2019 and continuing until the day the landlord obtains possession of the rental unit.
 - f) 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