

## Residential Tenancies Tribunal

Decision 19-0047-01

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 1:50 p.m. on August 28, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], represented by [REDACTED], hereafter referred to as the landlord, attended by conference call.
3. The tenant, [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 \$470.00 to \$197.09.
5. The tenant was not present or represented at the hearing. Prior to the start of the hearing, I tried to reach the tenant but I was unsuccessful. 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 July 12, 2019 and the tenant has had 47 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 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 \$197.09;
  - c. 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 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 - \$197.09

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 mobile home on December 1, 2014. A lease was signed for one year for the rental of the land with rent set at \$205.00 per month due on the 1<sup>st</sup> of each month. The lease was never renewed and the tenancy converted to a month to month tenancy. The current rate of rent for the use of the land is \$235.00. The landlord further testified that on May 1, 2019 the tenant pay the rent due for April and May 2019. The next time they received rent was on August 22, 2019 in the amount of \$507.91. This amount covered the rent due for June and July and \$37.91 towards the rent due on August 1, 2019. The landlord presented 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 the tenant paid \$507.91 towards the rent on August 22, 2019. This amount covered the rent due for the months of June and July and \$37.91 towards the rent due for August 1, 2019. Rent for the month of August can only be awarded up and including the day of the hearing (August 28, 2019). The amount of rent owing for August 1 – 28, 2019 is \$178.58 ( $\$235.00 \times 12 \text{ months} = \$2820.00 \div 365 \text{ days} = \$7.73 \text{ per day} \times 28 \text{ days} = \$216.44 - \$37.91 \text{ payment} = \$178.58$ ).

Additionally, the tenant is responsible for rent on a daily basis in the amount of \$7.73 beginning on August 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 August 1 – 28, 2019 .....\$178.58
  - b. A daily rate beginning August 29, 2019..... \$7.73

**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 18.(2)(b) of the Act.

Landlord Position

- 15. The landlord testified a termination notice under Section 19 of the *Residential Tenancies Act, 2018*, was posted on the door of the mobile home on July 9, 2019 to vacate on July 20, 2019 because they had not received the rent for the land for June and July 2019. 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, there is rent owing for August 2019 and the rent was in arrears when the termination 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 he is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since June 2019.

#### **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 1<sup>st</sup> 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 June 2019 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*. Therefore, I find 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 costs in the amount of \$20.00.


**Summary of Decision**

25. The landlord is entitled to the following:

- a) Payment of rent ..... \$178.58
- b) Late fees .....\$75.00
- c) Hearing expenses..... \$20.00
- d) Total owing to Landlord.....\$273.58
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$7.73 beginning August 29, 2019 and continuing until the day the landlord obtains possession of the rental land.
- g) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

September 4, 2019

Date

  
Residential Tenancies Section