

Residential Tenancies Tribunal

Decision 19-0114-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9: 20 a.m. on April 4, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as landlord1, participated in the hearing. [REDACTED], hereafter referred to as landlord2 was not present but she was represented by [REDACTED].
3. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, did not attend the hearing and they were not represented at the hearing.

Preliminary Matters

4. The tenants were not present or represented at the hearing. Prior to the hearing I called the number on file but I was unable to reach the tenants.
5. 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 affidavits of service submitted by landlord1 show that the notice of this hearing was sent by e-mail to the tenants on March 19, 2019 and the tenants have had 15 days to provide a response. Landlord1 provided a copy of the e-mails sent to the tenants along with copies of e-mails between the landlord and tenants prior to March 19, 2019. As the tenants were properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
7. The landlords discontinued the claim for vacate possession as the tenants vacated on/or about March 16, 2019. The claim for payment of rent was amended from \$8750.00 to \$10,250.00 and the landlords are seeking late fees in the amount of \$75.00.

Issues before the Tribunal

8. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$10,250.00;
 - b. Late fees in the amount of \$75.00;
 - c. Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. 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 - \$10,250.00

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

Landlord Position

- 12. The landlord testified that the tenants moved into the unit on May 1, 2016 for a one year term with rent set at \$1500.00 per month due on the 1st of each month. When the term ended the tenancy converted to month to month. The landlord further testified that the rent was paid through interac e-transfer and the tenants fell into arrears in January 2018. Since January 2018 some months the tenants made a payment towards the rent, some months there was no payment made and other months the full amount of rent for that month was paid. He said the last time he received rent was on January 10, 2019 in the amount of \$750.00. The landlord submitted a copy of the payment schedule (LL #3).
- 13. The landlord further testified that he served a termination notice (LL #2) on the tenants on February 18, 2019 under section 19 to vacate on March 15, 2019. The tenants vacated on March 16, 2019.

Analysis

- 14. I have reviewed the testimony and evidence of the landlord and I find the tenants fell into arrears in January 2018 and the rent has never been up to date since December 2017. I also find based on the payment schedule some months the landlord did not receive any rent and the last time the landlord received any monies towards the rent was on January 10, 2019 in the amount of \$750.00. Further, the landlords gave the tenants a termination notice to vacate on March 15, 2019 and the tenants vacated on March 16, 2019.
- 15. The amount of rent owing up to February 2019 is \$8750.00. Rent for the month of March can only be awarded up to the date the tenants vacated (March 16, 2019). The amount owing for March 1 – 16, 2019 is \$789.12 ($\$1500.00 \times 12 \text{ months} = \$18,000.00 \div 365 \text{ days} = \$49.32 \text{ per day} \times 16 \text{ days} = \789.12).

Decision

- 16. The landlords' claim for rent succeeds as per the following:
 - a. Rent owing up to February 2019 \$8750.00
 - b. Rent owing for March 1- 16, 2019 \$ 789.12
 - c. Total rent owing.....\$9539.12

Issue 2: Late fees - \$75.00

Landlord Position

17. Landlord1 testified they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since January 2018.

Analysis

18. The rental arrears has been established in paragraph 16 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 2018 the late fees have exceeded the maximum amount of \$75.00.

Decision

19. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 3: Application for Security Deposit

20. 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

21. The landlord testified a \$1000.00 security deposit was paid in March 2016.

Analysis

22. A security deposit was paid in March 2016. As the landlords have been successful in their claim for rent they shall retain the \$1000.00 security deposit as outlined in this decision and order.

Decision

23. The landlords shall retain the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

24. 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

25. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

26. The cost the landlords 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 tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision


27. The tenants shall pay the landlords' hearing costs in the amount of \$20.00.

Summary of Decision

28. The landlords are entitled to the following:

a) Rent owing	\$9539.12
b) Late fees.....	\$75.00
c) Hearing expenses	<u>\$20.00</u>
d) LESS: Security deposit	<u>(\$1000.00)</u>
e) Total Owing to Landlord	<u>\$8634.12</u>

May 17, 2019
Date


Residential Tenancies Section