

## Residential Tenancies Tribunal

Decision 19-0123-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 1:20 p.m. on March 13, 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, participated in the hearing.
3. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, did not attend the hearing.

### Preliminary Matters

4. The landlord amended the claim for payment of rent from \$386.48 to \$125.48.
5. The tenants were not present or represented at the hearing. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
6. 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.

7. The affidavit of service submitted by the landlord shows that the notice of this hearing was personally served on February 27, 2019 and the tenants have had 13 days to provide a response. As the tenants were 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 their absence.

### **Issues before the Tribunal**

8. The landlord is seeking the following:
  - a. Vacant possession of the rental premises;
  - b. Payment of rent in the amount of \$125.48;
  - c. Late fees;
  - d. 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 15, 19 and 34 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 - \$125.48**

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 stated that the tenants moved into the unit on August 1, 2018 for a 12 month term with rent set at \$890.00 per month due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$445.00 was paid on August 14, 2018.
13. The landlord testified the tenants' rent was paid for August and September 2018. In October 2018 they did not receive any rent. On November 6, 2018 they received from Advanced Education Skills and Labour three payments for a total of \$1393.52, leaving a balance of \$386.48. The landlord further testified December's rent was paid on November 30, 2018, January's rent was paid on December 31, 2018 and February's rent was paid on February 1, 2019. A payment of \$261.00 was paid on February 26, 2019 leaving a balance of \$125.48. March's rent became due on March 1, 2019 and \$890.00

was paid on March 1, 2019 leaving a balance of \$125.48. The landlord submitted a copy of the lease ledger (LL #3).

### Analysis

14. I have reviewed the testimony and evidence of the landlord and I find the landlord did not receive any rent during the month of October 2018 but they received the full rent for the months of November 2018 – March 2019. During the month of November they received \$503.52 towards October's rent and on February 26, 2019 they received a payment of \$261.00 leaving a balance of \$125.48 for October's rent.
15. Rent for the month of March can only be awarded up and including the day of the hearing (March 13, 2019). As the landlord has received \$890.00 on March 1, 2019 there is an overpayment of rent for the period March 1 – 13, 2019 in the amount of \$384.14 ( $\$890.00 - \$380.38$  for the period March 1 – 13, 2019 =  $\$509.62$  less the  $\$125.48$  outstanding as of February 26, 2019 =  $\$384.14$ ). Additionally, the tenants are responsible for rent on a daily basis in the amount of \$29.26 beginning on March 14, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

### Decision

16. The tenants shall pay a daily rate of rent in the amount of \$29.26 ( $\$890.00 \times 12 \text{ months} = \$10,680.00 \div 365 \text{ days} = \$29.26$  per day) beginning March 14, 2019 and continuing to the date the landlord obtains possession of the rental unit.
17. The landlord shall retain the overpayment of rent only in the amount equal to the per diem beginning March 14, 2019 and continuing to the date the landlord obtains possession of the rental premises.

### Issue 2: 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 testified a termination notice (Exhibit LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was served on the tenants on January 29, 2019 to vacate on February 10, 2019 because \$386.48 was outstanding

since October 2018. To the date of the hearing the tenants still reside in the unit.

### **Analysis**

20. 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 14 above, there is rent owing since October 2018. 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.

### **Decision**

21. 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

22. The landlord testified they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since October 2018.

### **Analysis**

23. The rental arrears has been established in paragraph 14 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 October 2018 the late fee have exceeded the maximum amount of \$75.00.

### **Decision**

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

### **Issue 4: Hearing Expenses - \$20.00**

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. The landlord is seeking this cost.

**Analysis**

27. The costs the landlord incurred to make the application served 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**

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

**Summary of Decision**

29. The landlord is entitled to the following:

- a) Late fees ..... \$75.00
- b) Hearing expenses ..... \$20.00
- c) **LESS: Overpayment of rent** ..... (\$384.14)
- d) Vacant Possession of the rented premises
- e) A daily rate of rent in the amount of \$29.26 beginning March 14, 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.
- g) The landlord shall retain the **\$289.14** overpayment of rent only in the amount equal to the per diem beginning March 14, 2019 and continuing to the date the landlord obtains possession of the rental premises.

March 22, 2019  
Date

  
Residential Tenancies Section