

## Residential Tenancies Tribunal

[REDACTED] Decision 19-0127-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:50 a.m. on March 19, 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 tenant, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

### Preliminary Matters

4. The landlord amended the claim for payment of rent from \$2161.00 to \$3256.00 and discontinued the claim for repairs to be carried out.
5. The tenant was 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 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 26, 2019 and the tenant has had 20 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 his 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 \$3256.00;
  - 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 - \$1500.00**

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 stated that the tenant moved into the unit on November 27, 2014 on a month to month tenancy with rent set at \$1095.00 per month due on the 1<sup>st</sup> of each month. On October 1, 2016 they took over management of the property. A security deposit in the amount of \$825.00 was paid in November 2014.
13. The landlord testified the tenant paid December's rent on December 18, 2018 leaving a credit of \$29.00. Since that date, the tenant has not paid any monies towards the rent. The landlord submitted a copy of the rent ledger (LL #2).

Analysis

- 14. I have reviewed the testimony and evidence of the landlord and I find the rent has not been paid for the months of January, February and March 2019. Rent for the month of March can only be awarded up and including the day of the hearing (March 19, 2019). The amount of rent owing for March is \$684.00 ( $\$1095.00 \times 12 \text{ months} = \$13,140.00 \div 365 \text{ days} = \$36.00 \text{ per day} \times 19 \text{ days} = \$684.00$ ). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$36.00 beginning on March 20, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

**Decision**

- 15. The landlord’s claim for rent succeeds as per the following:
  - a. Rent owing for January 2019 ..... \$1066.00
  - b. Rent owing for February 2019..... \$1095.00
  - c. Rent owing for March 1 - 19, 2019 ..... \$684.00
  - d. Total arrears..... \$2845.00
  
  - e. A daily rate beginning March 20, 2019..... \$36.00

**Issue 2: Vacant Possession of the Rental Premises**

- 16. 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

- 17. The landlord testified a termination notice was hand delivered to the tenant on January 16, 2019 (Exhibit LL #3) under Section 19 of the *Residential Tenancies Act, 2018*, to vacate on January 28, 2019 because he had not received the rent for the month of January 2019. To the date of the hearing the tenant still resides in the unit.

**Analysis**

- 18. 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 15 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 necessary information to serve on the tenant as per sections 19.(4) and (34) of the Act.

## **Decision**

19. 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

20. The landlord testified he is seeking payment of late fees in the amount of \$75.00 as the tenant has not paid the rent since December 2018.

#### **Analysis**

21. The rental arrears has been established in paragraph 15 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 January 2019 the late fee have exceeded the maximum amount of \$75.00.

## **Decision**

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

### **Issue 4: Application for Security Deposit**

23. 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

24. The landlord testified a \$825.00 security deposit was paid in November 2014.

**Analysis**

25. A security deposit was paid in November 2014. As the landlord has been successful in his claim for rent and late fees he shall retain the \$825.00 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 6: Hearing Expenses - \$44.00**

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, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Landlord Position

28. The landlord paid an application filing fee in the amount of \$20.00. He paid a courier \$24.00 to serve the Application for Dispute Resolution. The landlord submitted a copy of the invoice from the courier company (LL #4). The landlord is seeking these costs.

**Analysis**

29. The costs the landlord incurred to make the application and to have 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 tenant is responsible to cover the cost of the hearing expenses in the amount of \$44.00.

**Decision**

30. The tenant shall pay the landlord’s hearing costs in the amount of \$44.00.

**Summary of Decision**

31. The landlord is entitled to the following:

- a) Rent owing ..... \$2845.00
- b) Late fees ..... \$75.00

- c) Hearing expenses ..... \$44.00
- d) **LESS: Security deposit** ..... **(\$825.00)**
- e) **Total Owing to Landlord**..... **\$2139.00**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$36.00 beginning March 20, 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.

March 26, 2019  
Date

  
Residential Tenancies Section