

Residential Tenancies Tribunal

Decision 19-225-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:00 am on 18 April 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$2450.00;
 - b. An order for a payment of late fees in the amount of \$75.00;
 - and
 - c. An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are Sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from

the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 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 has been properly served. The landlord submitted an affidavit stating that the tenant was served with notice of the hearing, by e-mail, on 29 March 2019 and he has had 19 days to provide a response. The landlord also submitted a copy of that e-mail as well as a rental application showing that the tenant had provided her with that e-mail address. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

7. The landlord amended her application at the hearing and stated that she was seeking an additional \$100.00 in rent for a total claim of \$2550.00.

Issue 1: Rent Owing - \$2550.00

Relevant Submissions

The Landlords' Position

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant, commencing 01 November 2018, and a copy of that executed lease was submitted with her application (■ #1). The agreed rent was set at \$900.00 per month and it is acknowledged in the agreement that the tenant paid a security deposit of \$450.00.
9. The landlord submitted a copy of her rent records at the hearing (■ #2) showing the payments she had received from the tenant since he moved in. These records show that the tenant had not been paying his rent as required and that there were 2 occasions where his rent cheque was returned to the landlord for the reason of non-sufficient funds (NSF). By the end of January 2019, these records show that the tenant was in rental arrears in the amount of \$600.00 and the landlord had assessed NSF fees totalling \$50.00.
10. These records go on to show that rent was charged for February, March and April 2019, a total of \$2700.00, and the tenant had only made 1 payment of \$800.00 during that period, on 05 April 2019. The landlord calculates that the tenant owes her a total of \$2550.00 in rent and NSF fees.

Analysis

11. The testimony and evidence submitted at the hearing establishes that the tenant has not paid rent as required. As the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.

12. I leave the issue of the NSF fees for the next section of this decision. Regarding the rent, I calculate that up to the date of the hearing the tenant owes \$2132.62 (\$2400.00 for the period ending 31 March 2019 less a \$267.38 credit for April 2019 (\$900.00 per month x 12 months = \$10800.00 per year ÷ 365 days = \$29.59 per day x 18 days = \$532.62 less the payment of \$800.00 received on 05 April 2019)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$2132.62.
14. The tenant shall pay a daily rate of rent in the amount of \$29.59, beginning 19 April 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late fees - \$75.00, NSF fees - \$50.00

Relevant Submissions

The Landlords' Position

15. The landlord has assessed late fees in the amount of \$75.00 as well as NSF fees for the 2 returned cheques.

Analysis

16. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

(2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

17. Regarding the late fees, the minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

18. As the tenant has been in arrears since 02 December 2018, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.
19. Regarding the NSF fees, the landlord presented no evidence at the hearing to establish that her financial institution had charged her \$25.00 for those 2 returned cheques. As such, that part of her claim does not succeed.

Decision

20. The landlord's claim for late fees succeeds in the amount of \$75.00.
21. The landlord's claim for NSF fees does not succeed.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

19. With her application, the landlord submitted a copy of a termination notice (■ #3) which she stated had been posted to the tenant's door on 29 January 2019.
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 10 February 2019.
21. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

22. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) *where the residential premises is*

- (i) *rented from month to month,*
- (ii) *rented for a fixed term, or*
- (iii) *a site for a mobile home, and*

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

23. According to the testimony and evidence submitted at the hearing, on 29 January 2019 the tenant was in arrears in the amount of \$1050.00 and had been in arrears since the beginning of December 2018. Although the tenant had made a payment of \$450.00 to the landlord after that notice was issued, that payment did not bring the balance owing to zero. Since that time, rent has come due for February, March and April 2019 and only 1 other payment of \$800.00 was made.
24. As the notice meets the timeframe requirements set out in section 19 of the *Act* it is a valid notice.

Decision

25. The landlord's claim for an order for vacant possession of the rented premises succeeds.
26. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issues 4: Hearing Expenses

27. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expenses.

Issue 5: Security Deposit

28. The landlord testified that the tenant paid a security deposit of \$450.00 on 26 October 2018 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

29. The landlord is entitled to the following:
 - A payment of \$1777.62, determined as follows
 - a) Rent Owing\$2132.62

b) Late Fees\$75.00
c) Hearing Expenses\$20.00

d) LESS: Security Deposit (\$450.00)

e) Total Owing to Landlord \$1777.62

- A payment of a daily rate of rent in the amount of \$29.59, beginning 19 April 2019 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

30 April 2019

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal