

Residential Tenancies Tribunal

[REDACTED] Decision 19-271-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 30 May 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". The respondent, the [REDACTED], was not represented at the hearing. In this decision, [REDACTED] will be referred to as "the tenant".

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$4186.07; and
 - b. An order for a payment of hearing expenses in the amount of \$20.00.

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*.

Preliminary Matters

5. The tenant's estate was not represented at the hearing and no telephone number was available. 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 she has

been properly served. The landlord submitted an affidavit at the hearing showing that she had sent notice of this hearing to the tenant's estate by registered mail on 25 April 2019. The associated tracking history shows that the notice was signed for on 29 April 2019 and the tenant's estate has had 30 days to provide a response. As the tenant's estate was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in the absence of a representative for the estate.

Issue 1: Rent - \$4186.07

Relevant Submissions

The Landlord's Position

6. The landlord stated that she had entered into a monthly rental agreement with the tenant on 26 April 2017 and a copy of that executed agreement was submitted with her application (█ #3). The landlord stated that the rent was set at \$1414.00 per month.
7. The tenant passed away on 05 February 2019 and a copy of a Statement of Death was submitted at the hearing (█ #1) as well as Letters of Administration (█ #2).
8. The landlord stated that she regained possession of the rental unit on 25 March 2019.
9. The landlord submitted rent records at the hearing showing the payments the tenant had made since he moved into the unit (█ #4). According to these records, the tenant had been in rental arrears since the beginning of the tenancy and by October 2018 he owed the landlord \$3975.50.
10. On 02 October 2018, after filing an application with this Section (████████), the landlord and the tenant entered into a mediated agreement whereby the arrears of \$3975.50 would be paid off over the course of 80 months at a rate of \$50.00 per month.
11. The tenant did not comply with that agreement and the landlord had that agreement converted to an order which was issued by the Director of Residential Tenancies on 19 March 2019.
12. After entering into that agreement on 02 October 2018 the tenant again fell into rental arrears and the landlord's records show that she had only received 2 payments from him, totalling \$1125.00, between October 2018 and the time of his death in February 2019.
13. In addition to these payments, the tenant had also received a total of \$1480.00 in rent abatements.

14. According to the landlord's calculations, the tenant's estate owes \$4186.07 for the period from 01 November 2018 to 25 March 2019.

Analysis

15. I accept the testimony and evidence of the landlord in this matter and I find that the tenant had not paid rent as required. I also accept her claim that the unit was not returned to her by the tenant's family until 25 March 2019 and I agree that she is entitled to rent to that date.

16. Based on the landlord's rent records, I find that the tenant owes \$4186.07 (\$5656.00 for the period ending 28 February 2019 (\$1414.00 x 4 months) a pro-rated rent of \$1135.07 for March 2019 less the payments totaling \$1125.00 and less the rent abatements of \$1480.00).

Decision

17. The landlord's claim for a payment of rent succeeds in the amount of \$4186.07.

Issue 2: Hearing Expenses

18. The landlord submitted a hearing expense claim form and a receipt showing that she had paid \$20.00 to file this application. As the landlord's claim has been successful, the tenant's estate shall pay this hearing expense.

Summary of Decision

19. The landlord is entitled to the following:

- A payment of \$4206.07, determined as follows
 - a) Rent Owing\$4186.07
 - b) Hearing Expenses\$20.00
 - c) Total Owing to Landlord\$4206.07

11 September 2019

Date

John R. Cook
Residential Tenancies Tribunal