

## Residential Tenancies Tribunal

Decision 19-0291-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:20 a.m. on May 7, 2019 and reconvened on May 9, 2019 at 11:05 a.m. at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to the tenant, did not attend the hearing.

### Preliminary Matters:

4. The tenant was not present or represented at the hearing. Prior to the hearing I called the number on file for the tenant but the call went through to the message manager.
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 an 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 affidavit of service submitted by the landlord shows that the notice of this hearing was personally served on April 23, 2019 and the tenant has had 13 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 her absence.
7. The landlord discontinued the claim for vacant possession as the tenant vacated on May 4, 2019.
8. The first hearing was held on May 7, 2019. About 15 minutes into the hearing the landlord requested a postponement so that she could go through her rent ledger and receipts to determine the amount of rent owing. The hearing was postponed to May 9, 2019 @ 11:00 a.m.

### **Issues before the Tribunal**

- 9 The landlord is seeking the following:
  - a. Payment of rent in the amount of \$4800.00;
  - b. Hearing expenses.

### **Legislation and Policy**

10. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
11. Also relevant and considered in this case is Section 19 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 in the amount of \$4800.00.**

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

### **Landlord Position**

13. The landlord stated the tenant moved into the unit on April 1, 2015 on a month to month tenancy with rent set at \$1200.00 per month due on the 1<sup>st</sup> of each month. Later in 2015 the rent due date was changed to the 20<sup>th</sup> of each month.
14. The landlord testified at the first hearing that when she filed the application she was looking for rent in the amount of \$1200.00 for each month for the months

of November and December 2017 and March and April 2019 for a total of \$4800.00. At the second hearing the landlord testified that after going through her rent receipts she discovered the tenant owes \$12,600.00 but she is just seeking the \$4800.00. She testified that the amount of rent due for the period July – December 2017 is \$7200.00 but she only received \$3100.00 on November 22, 2017. The tenant was short \$4100.00. The rent due for 2018 was \$14,400.00 and she received \$12,600.00. The tenant was short \$1800.00 in 2018. The rent due for January – April 2019 was \$4800.00 and she received \$5900.00. An overpayment of \$1100.00. She said the total amount owing for July 2017 – April 2019 is \$4800.00 (\$4100.00 for 2017+ \$1800.00 for 2018 less the \$1100.00 overpayment for 2019 = \$4800.00). The landlord submitted copies of the rent receipts for the period March 2015 – April 4, 2019 and a copy of the rent ledger (LL #2).

### **Analysis**

15. I have reviewed the testimony and evidence of the landlord and I have determined that there is 1 issue that needs to be addressed; (i) is the landlord entitled to rent. I find that the tenant moved into the unit in April 2015 and since she moved into the unit the rent has never been paid up to date. Based on the rent receipts and the ledger the landlord presented the amount of rent owing by the tenant since July 2017 is \$4800.00.

### **Decision**

16. The landlord's claim for payment of rent succeeds in the amount of \$4800.00.

### **Issue 2 – Application of the security deposit - \$600.00**

17. 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**

18. The landlords testified a \$600.00 security deposit was paid on March 12, 2015.

### **Analysis**

19. A security deposit was paid on March 12, 2015. As the landlord has been successful in the claim for rent, the landlord shall retain the security deposit in the amount of \$600.00.

## Decision

20. The landlord shall retain the security deposit in the amount of \$600.00 as outlined in this decision and attached order.

## Issue 4: Hearing Expenses - \$20.00

21. 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

22. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

## Analysis

23. The cost the landlord 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 tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00 as the landlord was successful in her claim.

## Decision


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

## Summary of Decision

25. The landlord is entitled to the following:

a) Payment of rent .....	\$4800.00
b) Hearing expenses .....	\$20.00
c) <b>Less the security deposit</b> .....	<b>(\$600.00)</b>
d) <b>Total Owing to Landlord</b> .....	<b><u>\$4220.00</u></b>

July 26, 2019  
Date

  
Residential Tenancies Section