

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0312-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 9:25 a.m. on May 15, 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 tenant1, participated in the hearing by conference call. The tenant, [REDACTED], hereafter referred to as tenant2, did not attend the hearing but was represented by [REDACTED].

### **Preliminary Matters**

4. The landlord amended the claim for payment of rent from \$1190.00 to \$2385.00.

### **Issues before the Tribunal**

5. The landlord is seeking the following:
  - a. Vacant possession of the rental premises;
  - b. Payment of rent in the amount of \$2385.00;
  - c. Hearing expenses.

## **Legislation and Policy**

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case are Sections 14, 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 - \$2385.00**

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

#### Landlord Position

9. The landlord stated that the tenants moved into the unit on September 1, 2018 for a 12 month term with rent set at \$1195.00 per month due on the 1<sup>st</sup> of each month. He testified that the rent was always late. Prior to February 2019 the tenants owed some money towards the rent. Since February 2019 he has received \$1000.00 towards February's rent; \$795.00 towards March's rent and \$720.00 towards April's rent. The landlord has not received any monies towards May's rent. The landlord further testified that the rent was paid through interac e-transfer except for a couple of times. The rent was paid by cash. As evidence the landlord submitted copies of the interac e-transfers (LL #3) and a copy of the rent ledger (LL #2). This ledger shows the transactions from August 1, 2018 – May 1, 2019.

#### Tenant Position

10. Tenant1 testified that they signed a term agreement and she does not dispute the amount of \$2385.00 is owed for rent.

#### **Analysis**

11. I have reviewed the testimony and evidence of the landlord and tenant1 in this matter. I find tenant1 acknowledges rent is owed and she is not disputing the amount the landlord is claiming. Rent for the month of May can only be awarded up and including the day of the hearing (May 15, 2019). The amount of rent owing for May 1 – 15, 2019 is \$589.35 (\$1195.00 x 12 months = \$14,340.00 ÷ 365 days = \$39.29 per day x 15 days = \$589.35). Additionally, the tenants are responsible for rent on a daily basis in the amount of \$39.29 beginning on May 16, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

## Decision

12. The landlord's claim for rent succeeds as per the following:

a. Rent owing for September 2018 .....	\$75.00
b. Rent owing for November 2018 .....	\$45.00
c. Rent owing for February 2019.....	\$195.00
d. Rent owing for March 2019 .....	\$400.00
e. Rent owing for April 2019 .....	\$475.00
f. Rent owing for May 1 - 14, 2019 .....	<u>\$589.35</u>
g. Total arrears.....	<u>\$1779.35</u>

h. A daily rate beginning May 16, 2019 ..... \$39.29

## Issue 2: Vacant Possession of the Rental Premises

13. 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

14. The landlord testified a termination notice (Exhibit LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was served on the tenant on April 6, 2019 to vacate on April 16, 2019 because the rent was in arrears. To the date of the hearing the tenants still reside in the unit.

### Tenant Position

15. The tenant acknowledges she received the termination notice.

## Analysis

16. 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 12 above, the rent has been 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**

17. 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: Application for Security Deposit**

18. 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

19. The landlord testified the tenants paid a \$900.00 security deposit. The security deposit was paid in three installments. \$450.00 was paid on August 1, 2018; \$270.00 was paid on September 1, 2018 and the balance of \$180.00 was paid on September 18, 2018.

### **Analysis**

20. A security deposit was paid in the amount of \$900.00 between August and September 2018. As the landlord has been successful in the claim for rent they shall retain the \$900.00 security deposit as outlined in this decision and order.

### **Decision**

21. The landlord shall retain the security deposit as outlined in this decision and attached order.

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

22. 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

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

## **Analysis**

24. 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 tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

## **Decision**

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

## **Summary of Decision**

31. The landlord is entitled to the following:

- a) Rent owing ..... \$1779.35
- b) Hearing expenses ..... \$20.00
- c) **LESS: Security deposit** ..... (\$900.00)
- d) **Total Owing to Landlord** ..... **\$899.35**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$39.29 beginning May 16, 2019 and continuing until the day the landlord obtains possession of the rental unit.
- g) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

May 17, 2019

Date

Residential Tenancies Section