

Residential Tenancies Tribunal

[REDACTED] Decision 19-0417-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:25 a.m. on June 20, 2019 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 tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, did not attend the hearing.

Preliminary Matters

4. The landlord removed [REDACTED] as landlord from the application. She amended the claim for payment of rent from \$850.00 to \$1500.00
5. The tenants were not present or represented at the hearing. Prior to the start of the hearing I was speaking with tenant2 but he was not willing to participate in the hearing by telephone. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
7. According to Rule 29.05(2)(a) a respondent to an application must be served with the 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.

8. The affidavits of service submitted by the landlord show that the notices of this hearing were sent electronically on June 4, 2019 and the tenants have had 15 days to provide a response. The tenants provided their e-mail address in the rental agreement. As the tenants were 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 their absence.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$1500.00;
 - c. 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 are Sections 14, 19, 34 and 35 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

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 that the tenants signed a one year term agreement to start on November 15, 2018 with rent set at \$750.00 per month due on the 1st of each month.
14. The landlord testified that the tenants paid the rent for the months of November 2018 to April 2019. April's rent was received on April 16, 2019. Since that date she has not received any monies from the tenants. The landlord presented a copy of the rent ledger (LL #3). This shows the transactions from November 1, 2018 – June 1, 2019.

Analysis

15. I have reviewed the testimony and evidence of the landlord and I find the landlord has not received any monies from the tenants since April 16, 2019.

16. Rent for the month of June can only be awarded up and including the day of the hearing (June 20, 2019). The rent owing for June 1 – 20, 2019 is \$493.20 ($\$750.00 \times 12 \text{ months} = \$9000.00 \div 365 \text{ days} = \$24.66 \text{ per day} \times 20 \text{ days} = \493.20). Additionally, the tenants are responsible for rent on a daily basis in the amount of \$24.66 beginning on June 21, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

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

a. Rent owing for May 2019	\$750.00
b. Rent owing for June 1 – 20, 2019	<u>\$493.20</u>
c. Total arrears.....	<u>\$1243.20</u>
d. A daily rate beginning June 21, 2019	\$24.66

Issue 2: Vacant Possession of the Rental Premises

18. 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

19. The landlord testified a termination notice (Exhibit LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was served on the tenants through e-mail on May 29, 2019 to vacate on June 9, 2019 because she had not received the rent for May 2019. To the date of the hearing the tenants still reside in the unit.

Analysis

20. 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 for May 2019 was not paid. 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. The notice was served in accordance with Section 35 of the Act.

Decision

21. 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

22. 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

23. The landlord testified a \$375.00 security deposit was paid on November 1, 2018.

Analysis

24. A security deposit was paid in November, 2018. As the landlord has been successful in her claim for the payment of rent, she shall retain the \$375.00 security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$20.00

26. 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

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

Analysis

28. The costs 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

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

Summary of Decision

30. The landlord is entitled to the following:

- a) Payment of rent \$1243.20
- b) Hearing expenses \$20.00
- c) **LESS: Security deposit (\$375.00)**
- d) **Amount owing to the landlord \$888.20**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$24.66 beginning June 21, 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.

June 26, 2019

Date

Residential Tenancies Section