

Residential Tenancies Tribunal

Decision 19-0472-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 02 July 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1385.00;
 - b. An order for a payment of late fees in the amount of \$35.00; 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*.

Preliminary Matters

6. The landlord amended his application at the hearing. He stated that he is no longer seeking an order for vacant possession of the rented premises as the tenant vacated on 28 June 2019. He also stated that he is now seeking the maximum amount of late fees.

Issue 1: Rent - \$1385.00

Relevant Submissions

The Landlord's Position

7. The tenant and her then-boyfriend moved into the rental unit in April 2016. They split up in 2019 and from April 2019 onwards, the tenant resided at the unit as the sole leaseholder.
8. The agreed rent was set at \$1385.00 per month.
9. The landlord stated that the tenant paid her rent for April and May 2019, by INTERAC e-Transfer, but no payments were received in June 2019.
10. Accordingly, the landlord served the tenant with a termination notice on 17 June 2019 and a copy of that notice was submitted with his application (█ #1). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 28 June 2019. The tenant moved on that date.
11. The landlord is seeking an order for a payment of rent for June 2019 in the amount of \$1385.00.

The Tenant's Position

12. The tenant stated that she received a text-message from the landlord on 15 June 2019 demanding the rent for that month. She stated that she was unable to send it by e-Transfer and instead the landlord visited her unit and she gave him \$1385.00 in cash. No receipt was issued.
13. The landlord denied that he had received any cash payments from the tenant for rent for June 2019.

Analysis

14. I found the testimony of the landlord to be credible and believable.
15. Where a tenant asserts that a payment of rent had been made, the burden of proof lies with her to establish the payment and receipt.
16. Besides her testimony, which was contradicted by the landlord, no evidence was presented by the tenant (e.g., a receipt, etc.) to establish that she had made such a payment and I therefore have to conclude that her burden had not been discharged.
17. Additionally, if the tenant had paid the landlord the full amount of rent on 15 June 2019, as she claims, I cannot square that statement with the fact that the landlord

had issued her a termination notice 2 days later when no rent was owing. I also don't understand why the tenant would vacate the unit if she owed no rent.

18. As such, the landlord's claim succeeds.

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19. The landlord's claim for a payment of rent succeeds in the amount of \$1385.00.

Issue 2: Late fees - \$75.00

Relevant Submissions

20. The landlord has assessed late fees in the amount of \$75.00.

Analysis

21. 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.

22. 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.

23. As the tenant has been in arrears since 02 June 2019, the landlord is entitled to an award for late fees to the date of the hearing in the amount of \$65.00 (\$5.00 for 02 June 2019 and \$60.00 for the 30 days between 03 June and 02 July 2019).

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24. The landlords' claim for late fees succeeds in the amount of \$65.00.

Issue 3: Hearing Expenses

25. As the landlord's claim has been successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

26. The landlord is entitled to the following:

- a) Rent Owing\$1385.00
- b) Late Fees\$65.00
- c) Hearing Expenses.....\$20.00

- d) Total Owing to Landlord\$1470.00

23 October 2019

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal