

Residential Tenancies Tribunal

[REDACTED] Decision 19-0486-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 p.m. on July 16, 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 the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord amended the claim for payment of rent from \$2700.00 to \$3600.00 up to July 2019.
5. The tenant was not present or represented at the hearing. Prior to the start of the hearing I called the number on file for the tenant but the number was no longer in service.
6. 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 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.

7. The affidavit of service submitted by the landlord shows that the notice of this hearing was sent electronically on June 20, 2019 and the tenant has had 25 days to provide a response. The tenant provided his e-mail address in the offer to lease form. 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 his absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$3600.00;
 - c. Late fees in the amount of \$75.00;
 - d. Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 14, 15, 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 - \$3600.00

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

Landlord Position

12. The landlord stated that the tenant moved into the unit on March 1, 2019 for a one year term with rent set at \$900.00 per month due on the 1st of each month. The landlord submitted a copy of the lease agreement (LL #1).
13. The landlord testified that since the tenant moved into the unit they have not received any monies towards the rent. They received \$450.00 for the security deposit. She said the first month's rent was free because the tenant signed a 12 month term agreement. The landlord presented a copy of the lease ledger (LL #3). This shows the transactions from February 27 – July 1, 2019.

Analysis

14. I have reviewed the testimony and evidence of the landlord and I find the landlord has not received any monies from the tenant towards the rent. Also, the landlord did not charge rent for the month of March 2019 because the tenant signed a lease agreement for 12 months.
15. Rent for the month of July can only be awarded up and including the day of the hearing (July 16, 2019). The rent owing for July 1 – 16, 2019 is \$473.44 (\$900.00 x 12 months = \$10,800.00 ÷ 365 days = \$29.59 per day x 16 days = \$473.44). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$29.59 beginning on July 17, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

16. The landlord's claim for rent succeeds as per the following:
 - a. Rent owing for April 2019..... \$900.00
 - b. Rent owing for May 2019 \$900.00
 - c. Rent owing for June 2019 \$900.00
 - d. Rent owing for July 1 – 16, 2019..... \$473.44
 - e. Total arrears..... \$3173.44
- f. A daily rate beginning July 17, 2019 \$29.59

Issue 2: Vacant Possession of the Rental Premises

17. 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

18. The landlord testified a termination notice (Exhibit LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was served on the tenant by posting the notice on the door on May 10, 2019 to vacate on May 24, 2019 because they had not received any monies towards the rent. To the date of the hearing the tenant still resides in the unit.

Analysis

19. 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 16 above, the tenant has not paid any monies towards the rent since he moved into the unit. 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

20. 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: Late fees - \$75.00

Landlord Position

21. The landlord testified they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since April 2019.

Analysis

22. The rental arrears has been established in paragraph 16 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has been in arrears since April 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

23. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Application for Security Deposit

24. 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

25. The landlord testified a \$450.00 security deposit was paid on February 27, 2019.

Analysis

26. A security deposit was paid in February 2019. As the landlord has been successful in their claim for the payment of rent and late fees they shall retain the \$450.00 security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$20.00

28. 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

29. The landlord paid an application filing fee (LL #4) in the amount of \$20.00. The landlord is seeking this cost.

Analysis

30. 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.

Decision

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

Summary of Decision

32. The landlord is entitled to the following:

- a) Payment of rent \$3173.44
- b) Late fees \$75.00
- c) Hearing expenses \$20.00
- d) **LESS: Security deposit (\$450.00)**
- e) **Amount owing to the landlord \$2818.44**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$29.59 beginning July 17, 2019 and continuing until the day the landlord obtains possession of the rental unit.
- h) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

July 19, 2019

Date

Residential Tenancies Section