

Residential Tenancies Tribunal

[REDACTED] Decision 19-0497-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:30 am on 31 July 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], trading as [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$480.00;
 - b. An order for a payment of late fees in the amount of \$75.00; 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, 19 and 32 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing. I telephoned her from the hearing room and she informed me that she would be contacting her lawyer and would provide her with the telephone number for the hearing room. Neither

the tenant nor her lawyer called back. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where a respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord stated that the tenant had been served with notice of the hearing, by text-message, on 01 July 2019 and a copy of the text-message exchanges the tenant had with the landlord were submitted at the hearing. The tenant has had 29 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended her application at the hearing. She stated that he was no longer seeking an order for possession of the rented premises as the tenant moved out at on 05 July 2019. She also stated that she was now seeking rent for July 2019 for a total claim of \$1380.00.

Issue 1: Rent - \$1380.00

Relevant Submissions

8. The landlord stated that she had purchased the rental unit in 2015 and the tenant was already living there at that time.
9. There is no written rental agreement, but the landlord stated that the total rent comes to \$900.00 per month. \$660.00 of that amount is paid directly to the landlord, on the tenant's behalf, by Income Support and the remaining \$240.00 was paid each month by the tenant.
10. The landlord stated that she received the usual payments from Income Support in May and June 2019 but the tenant failed to pay her share during those 2 months.
11. Accordingly, on 10 June 2019 the landlord issued the tenant a termination notice and a copy of that notice was submitted with her application (█ #1). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where tenant fails to pay rent) and it had an effective termination date of 21 June 2019. The landlord stated that the tenant vacated the unit on 05 July 2019.
12. The landlord testified that the tenant had left behind a significant amount of personal belongings at the rental unit as well as some of her furniture. Those items have not been removed from the unit and are currently being stored there.
13. The landlord stated that because these items are still in the unit, she has been unable to rent it for the month of July 2019.

14. The landlord is seeking an order for a payment of the tenant's share of rent for May and June 2019, \$480.00, as well as a payment of a full month's rent for July 2019.

Analysis

15. I accept the landlord's claim that the tenant had not paid her share of rent for May and June 2019 and I agree with the landlord that she is owed \$480.00 for those 2 months.
16. With respect to rent for July 2019, as the tenant had use and enjoyment of the property up to 05 July 2019, I find that the landlord is entitled to an additional \$145.16 for those 5 days ($\$900.00 \text{ per month} \div 31 \text{ days in July} \times 5 \text{ days} = \145.16).
17. Regarding the remaining days in July 2019 during which the landlord elected to keep the tenant's personal property stored at the rental unit, I find that the landlord is not entitled to rent for that period. Section 32 of the *Residential Tenancies Act, 2018* states that where a landlord has stored personal property at the rented premises, she can recover the storage costs in one of 2 ways—have the tenant pay her those costs when she retrieves her abandoned property or sell the tenant's property and retain from the proceeds the costs she incurred for storage.
18. As such, I find that the landlord is entitled to rent for the period from 01 May to 05 July 2019.

Decision

19. The landlord's claim for a payment of rent succeeds in the amount of \$625.16 (\$480.00 + \$145.16).

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.(1) 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. The minister has set the following fees:

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.

Decision

23. As the tenant has been in arrears since 02 May 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Hearing Expenses

24. The landlord paid \$20.00 to file this application. As the landlords' claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

25. The landlord is entitled to the following:

- a) Rent Owing \$625.16
- b) Late Fees \$75.00
- c) Hearing Expenses \$20.00
- d) Total Owing to Landlord \$720.16

18 December 2019

Date

John R. Cook
Residential Tenancies Tribunal