

## Residential Tenancies Tribunal

Decision 19-567-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:15 am on 03 September 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". 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 \$2035.00;
  - 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 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

### Preliminary Matters

6. The landlord amended her application at the hearing and stated that she was seeking \$2205.00 in rent.

## **Issue 1: Rent Owing - \$2205.00**

### **Relevant Submissions**

#### The Landlords' Position

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant, commencing 01 July 2014, and a copy of that executed lease was submitted with her application ( █ #1). The current rent is set at \$1035.00 per month and it is acknowledged in the agreement that the tenant paid a security deposit of \$705.00.
8. The landlord submitted a copy of her rent records at the hearing ( █ #2) showing the payments she had received from the tenant since the tenancy began. She pointed out that, for the months of June, July and August 2019, the rent cheques were returned for the reason of non-sufficient funds (NSF). The tenant did make 2 payments at the end of August 2019, totalling \$1925.00.
9. Since those last payments, rent for September 2019 has also come due. The landlord's records show that the tenant is currently in arrears in the amount of \$2205.00. That amount includes 3 NSF fees of \$25.00 the landlord has assessed for the cheques that had been returned.
10. The landlord is seeking an order for a payment of rent in the amount of \$2205.00.

#### The Tenant's Position

11. The tenant did not dispute the landlord's records and she acknowledged that she owed the landlord \$2205.00.
12. The tenant stated that she has fallen into financial hardship and she just does not have the money to give the landlord at this time. She stated that she had been speaking with a case worker and she is currently on a waiting list for subsidized housing.

### **Analysis**

13. The testimony and evidence submitted at the hearing establishes that the tenant has not paid rent as required. As the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
14. I calculate the rent owing to the date of the hearing to be \$1272.09 (\$1170.00 for the period ending 31 August 2019 and \$102.09 for September 2019 (\$1035.00 per month x 12 months = \$12,420.00 per year ÷ 365 days = \$34.03 per day x 3 days = \$102.09)).

## Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$1272.09.
16. The tenant shall pay a daily rate of rent in the amount of \$34.03, beginning 04 September 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

## Issue 2: Late fees - \$75.00

### Relevant Submissions

#### The Landlords' Position

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

### Analysis

16. 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.*

17. 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

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

## Issue 3: Vacant Possession of the Rented Premises

### Relevant Submissions

#### The Landlords' Position

19. With her application, the landlord submitted a copy of a termination notice (█ #3) which she stated had been posted to the tenant's door on 14 June 2019.
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 26 June 2019.
21. The landlord is seeking an order for vacant possession of the rented premises.

#### The Tenant's Position

22. The tenant denied that she had received this termination notice. She stated that had she received such a notice she would have been in contact with her case worker about that matter.

### Analysis

23. Section 19 of the *Residential Tenancies Act, 2018* states:

#### ***Notice where failure to pay rent***

***19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),***

...

***(b) where the residential premises is***

- (i) rented from month to month,***
- (ii) rented for a fixed term, or***
- (iii) a site for a mobile home, and***

***the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.***

24. I accept the landlord's claim that she had posted the termination notice to the tenant's door on 14 June 2019.
25. According to the testimony and evidence submitted at the hearing, on 14 June 2019 the tenant was in arrears in the amount of \$950.00 and the landlord had

assessed an NSF fee of \$25.00. The tenant had been in arrears since the beginning of that month and she failed to bring the balance down to zero prior to the termination date of 26 June 2019.

26. As the notice meets the timeframe requirements set out in section 19 of the *Act* it is a valid notice.

### **Decision**

27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

### **Issues 4: Hearing Expenses**

29. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application and a receipt for \$12.39 for the costs of serving the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expenses.

### **Issue 5: Security Deposit**

30. The landlord testified that the tenant paid a security deposit of \$705.00 on 15 May 2014 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

### **Summary of Decision**

31. The landlord is entitled to the following:
  - A payment of \$674.48, determined as follows
    - a) Rent Owing .....\$1272.09
    - b) Late Fees .....\$75.00
    - c) Hearing Expenses .....\$32.39
    - d) **LESS: Security Deposit.....(\$705.00)**
    - e) Total Owing to Landlord .....\$674.48
  - A payment of a daily rate of rent in the amount of \$34.03, beginning 04

September 2019 and continuing to the date the landlord obtains possession of the rental unit,

- An order for vacant possession of the rented premises,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

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09 September 2019

Date

  
John R. Cook  
Residential Tenancies Tribunal