

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0573-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 1:20 p.m. on August 27, 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 tenants were not present or represented at the hearing. Prior to the hearing I spoke with both of the tenants but they chose not to participate in the hearing. 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.
5. The affidavits of service submitted by the landlord shows that the notice of this hearing was personally served on the tenants on July 8, 2019 and the tenants have had 49 days to provide a response. 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**

6. The landlord is seeking the following:
  - a. Vacant possession of the rental premises;
  - b. Payment of rent in the amount of \$1800.00;
  - c. Late fees in the amount of \$75.00;
  - d. Hearing expenses.

## **Legislation and Policy**

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
8. 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 - \$1800.00**

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

#### Landlord Position

10. The landlord stated that the tenants signed a one year lease agreement on December 28, 2018 to begin on February 1, 2019 with rent set at \$1200.00 per month due on the 1<sup>st</sup> of each month. The tenants moved into the unit on January 1, 2019. The landlord testified that he received the rent for each month up to the month of June 2019. Some months the rent was paid in installments and the rent for June was paid on May 31, 2019. Since receiving June's rent he has received \$600.00 towards the rent on July 20, 2019. The landlord submitted copies of his bank statements for the period May 1 – July 9, 2019 (LL #3).

#### Analysis

11. I have reviewed the testimony and evidence of the landlord and I have determined that there is one issue that needs to be addressed; is rent owing. I find the rent was paid in full up to June 2019. \$600.00 was paid towards July's rent leaving a balance of \$600.00 and no monies have been paid towards the rent for August 2019. Rent for the month of August can only be awarded up and including the day of the hearing (August 27, 2019). The amount of rent owing for August 1 – 27, 2019 is \$1064.15 (\$1200.00 x 12 months = \$14,400.00 ÷ 365 days = \$39.45 per day x 27 days = \$1065.15). Additionally, the tenant is

responsible for rent on a daily basis in the amount of \$39.45 beginning on August 28, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

## **Decision**

12. The landlord's claim for rent succeeds as per the following:
  - a. Rent owing for July 2019 .....\$600.00
  - b. Rent owing for August 1 – 27, 2019 .....\$1065.15
  - c. Total rent owing .....\$1665.15
  - d. A daily rate beginning August 28, 2019..... \$39.45

## **Issue 2: Vacant Possession of the Rental Premises**

13. 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

14. The landlord testified that a termination notice (LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was posted on the door of the rental unit on July 8, 2019 to vacate on July 19, 2019 because he had not received the rent for the month of July 2019. To the date of the hearing the tenants still reside in the unit.

### **Analysis**

15. 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 12 above, a portion of rent is in arrears for July and no monies have been paid towards the rent for August 2019. 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 tenants as per sections 19.(4) and (34) of the Act. The notice was served in accordance with Section 35 of the Act.

## **Decision**

16. 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

17. The landlord testified he is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since July 2019.

#### **Analysis**

18. The rental arrears has been established in paragraph 12 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> 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 July 2019 the late fees have exceeded the maximum amount of \$75.00.

## **Decision**

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

### **Issue 4: Application for Security Deposit**

20. 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

21. The landlord testified a \$600.00 security deposit was paid on December 28, 2018.

#### **Analysis**

22. A security deposit was paid in December 2018. As the landlord has been successful in his claim for the payment of rent and late fees, he shall retain the \$600.00 security deposit as outlined in this decision and order.

## Decision

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

### Issue 4: Hearing Expenses - \$96.14

24. 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

25. The landlord paid an application filing fee in the amount of \$20.00 and \$76.14 for development of photographs for a total of \$96.14. The landlord is seeking these costs.

#### Analysis

26. 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*. However, the amount he is claiming for development of the photographs and copies of documents is excessive as he only presented a few documents. Based on the receipts he submitted and the number of documents presented, I conclude \$5.00 to be a reasonable amount to cover the cost for photocopies. As the landlord's claim was successful, the tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00 for the application filing fee and \$5.00 for photocopies for a total of \$25.00.

## Decision

27. The tenants shall pay the landlord's hearing costs in the amount of \$25.00.

### Summary of Decision

28. The landlord is entitled to the following:

- |  |                          |
|--|--------------------------|
| a) Payment of rent .....               | \$1665.15                |
| b) Late fees .....                     | \$75.00                  |
| c) Hearing expenses.....               | <u>\$25.00</u>           |
| d) <b>LESS: Security deposit .....</b> | <b><u>(\$600.00)</u></b> |

- e) **Total owing to Landlord.....\$1165.15**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$39.45 beginning August 28, 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.

September 4, 2019

Date

[REDACTED]  
Residential Tenancies Section