

## **Residential Tenancies Tribunal**

Decision 19-0693-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 1:05 p.m. on November 26, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the landlord, attended the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereafter referred to as the tenants, did not attend the hearing.

### **Preliminary Matter:**

4. The landlord discontinued the claim for vacant possession as the tenants vacated on September 1, 2019. The claim for payment of rent was amended from \$4453.00 to \$4353.00.
5. The tenants were not present or represented at the hearing. The tenants sent an e-mail to our office on Monday, November 25, 2019 stating that they received the application but they will not be attending the hearing as they have a death in their family. 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.

6. The affidavit of service submitted by the landlord shows that the notice of the hearing was electronically served on the tenants on November 14, 2019. The tenants have had 11 days to provide a response. The landlord submitted a copy of the e-mail dated November 14, 2019 along with a copy of an e-mail the tenants sent on November 2, 2019. 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**

7. The landlord is seeking the following:
  - a. Payment of rent in the amount of \$4343.00;
  - b. Late fees in the amount of \$75.00;
  - c. Hearing expenses.

### **Legislation and Policy**

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 14, 15 and 19 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 - \$4343.00**

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

### Landlord Position

11. The landlord testified that the tenants moved into the unit on August 15, 2018 for a one year term with rent set at \$1195.00 per month due on the 1<sup>st</sup> of each month. The rent was paid in full up to the end of October 2018. The rent was paid through interac e-transfer. The tenants fell into arrears in November 2018 and they have carried a balance throughout the remainder of the tenancy. A termination notice was issued on August 21, 2019 to vacate on August 31, 2019. The tenants vacated on September 1, 2019. The last payment the landlord received prior to the tenants moving out was \$200.00 on August 15, 2019. Since the tenants moved out they have made a payment of \$200.00 on November 21, 2019. The following is a breakdown on the payments received since November 1, 2018:

November 2, 2018	\$1000.00
November 16, 2018	\$150.00
January 29, 2019	\$1200.00
March 1, 2019	\$300.00
March 20, 2019	\$700.00
April 18, 2019	\$200.00
May 8, 2019	\$287.00
June 6, 2019	\$300.00
June 14, 2019	\$760.00
June 20, 2019	\$300.00
June 28, 2019	\$300.00 (2 payments of \$150.00)
July 5, 2019	\$200.00
July 12, 2019	\$300.00
July 25, 2019	\$400.00 (2 payments of \$200.00)
August 1, 2019	\$300.00
August 10, 2019	\$400.00 (2 payments of 200.00)
August 15, 2019	\$200.00
November 21, 2019	\$100.00

12. The landlord submitted a copy of the rent ledger (LL #3).

### **Analysis**

13. I have reviewed the testimony and evidence of the landlord. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenants moved into the unit in August 2018 and they fell into arrears in November 2018. Based on the rent ledger the last time the tenants had a zero balance was in October 2018. The tenants vacated on September 1, 2019 and the amount owing at that time was \$4443.00. The tenants made a payment of \$100.00 on November 21, 2019 leaving a balance of \$4343.00.

### **Decision**

14. The landlord's claim for rent succeeds in the amount of \$4343.00.

### **Issue 2: Late fees - \$75.00**

#### **Landlord Position**

15. The landlord testified he is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since November 2018.

## **Analysis**

16. The rental arrears has been established in paragraph 14 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 November 2018 the late fees have exceeded the maximum amount of \$75.00.

## **Decision**

17. The claim for late fees succeeds in the amount of \$75.00.

## **Issue 3: Application for Security Deposit**

18. 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

19. The landlord testified that the tenants paid an \$880.00 security deposit in August 2018.

## **Analysis**

20. An \$880.00 security deposit was paid in August 2018. The landlord shall retain the security deposit as he has been successful in his claim for the payment of rent and late fees. The interest rate on security deposits for the period 2018 – 2019 is 0%.

## **Decision**

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

## **Issue 3: Hearing Expenses - \$20.00**

22. 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

23. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

### **Analysis**

24. 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*. As the landlord's claim was successful, the tenants are responsible to pay the landlord's hearing expenses in the amount of \$20.00.

### **Decision**

25. The tenants shall pay the landlord's hearing expenses in the amount of \$20.00.

### **Summary of Decision**

26. The landlord is entitled to the following:

a) Payment of rent.....	\$4343.00
b) Late fees .....	\$75.00
c) Hearing expenses .....	\$20.00
d) <b>Less the security deposit.....</b>	<b><u>(880.00)</u></b>
e) <b>Total owing to the Landlord .....</b>	<b><u>\$3558.00</u></b>

April 8, 2020

Date

Residential Tenancies Section