

Residential Tenancies Tribunal

Decision 19-0744-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 01 October 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", did not participate [REDACTED]

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1600.00;
 - 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 and 19 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 and I was unable to reach him by telephone from the hearing room. 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 he has been properly served. The landlord submitted an affidavit with his application stating that the tenant was served by a process server on 19 September 2019 and he has had 11 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 his absence.

7. The landlord amended her application at the hearing. She stated that she was no longer seeking an order for possession of the rented premises as the tenant moved out on 27 September 2019.

Issue 1: Rent - \$1600.00

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant commencing 01 December 2017 and a copy of the executed lease was submitted with her application (■ #1). The agreed rent was set \$800.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$600.00.
9. The landlord submitted her rent records with her application (■ #2) and she pointed out that she had received no rent for August or September 2019. Accordingly, on 18 September 2019 she issued the tenant a termination notice. This notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 29 September 2019. The landlord stated that the tenant moved on 27 September 2019.
10. The landlord is seeking an order for a payment of rent for August and September 2019: \$1600.00.

Analysis and Decision

11. I accept the landlord's testimony and evidence in this matter and I find that the tenant had not paid rent as required for August and September 2019.
12. The landlord's claim for a payment of rent succeeds in the amount of \$1600.00.

Issue 2: Late fees - \$75.00

Relevant Submissions

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

Analysis

14. Section 15.1(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.

15. 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

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

Issue 3: Hearing Expenses

17. The landlord paid \$20.00 to file this application and \$50.00 to hire a process server to serve the tenant with notice of the hearing. As the landlords' claim has been successful, the tenant shall pay these hearing expenses.

Issue 4: Security Deposit

18. The landlord stated that the tenant had paid a security deposit of \$600.00 on 17 November 2017 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and order.

Summary of Decision

19. The landlord is entitled to the following:

- a) Rent Owing \$1600.00
- b) Late Fees \$75.00
- c) Hearing Expenses \$70.00
- d) LESS: Security Deposit (\$600.00)
- e) Total Owing to Landlord \$1145.00

25 March 2020

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal