

Residential Tenancies Tribunal

[REDACTED] Decision 19-0753-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on October 15, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], represented by [REDACTED] hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord discontinued the claim for vacant possession as the tenant vacated on September 30, 2019. He amended the claim to include NSF charges in the amount of \$25.00.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the number on file for the tenant but I was unable to reach him. 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 this hearing was electronically served on the tenant on September 20, 2019 and the tenant has had 24 days to provide a response. The landlord submitted a copy of the e-mail sent to the tenant on September 20, 2019 along with a copy of the rental agreement. The tenant provided his e-mail address on the rental agreement. As the tenant was 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 his absence.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$850.00;
 - b. Late fees in the amount of \$75.00;
 - c. Payment of NSF charges in the amount of \$25.00;
 - d. 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 - \$850.00

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 tenant moved into the unit on April 1, 2019 for a one year term with rent set at \$850.00 per month due on the 1st of each month. Beginning May 1, 2019, the rent was paid by pre-authorized payments. On August 1, 2019 the rent was paid by the pre-authorized payment but that same day it was returned as Non-Sufficient Funds (NSF). The landlord was charged a \$25.00 NSF fee. The tenant paid the rent along with the \$25.00 NSF fee on August 23, 2019. He further testified that on September 1, 2019, the rent was paid by the pre-authorized payment and it was returned as NSF on September 4, 2019. The tenant was served with a termination notice under section 19 (failure to pay rent) on September 19, 2019 to vacate on September 30, 2019 because the rent had not been paid for September 2019. The tenant vacated

on September 30, 2019. The landlord submitted a copy of the termination notice (LL #2) and a copy of the rent ledger (LL #3).

Analysis

12. 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 for the period April – August 2019. On September 1, 2019 the rent was paid by the pre-authorized payment but it was returned as NSF on September 4, 2019. A termination notice was served on September 19, 2019 to vacate on September 30, 2019 and the tenant vacated on that date. The tenant shall pay the landlord \$850.00 for rent for the month of September 2019.

Decision

13. The landlord's claim for the payment of rent succeeds in the amount of \$850.00 for the month of September 2019.

Issue 2: Late fees - \$75.00

Landlord Position

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

Analysis

15. 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 1st 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 September 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

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

Issue 3: Payment of NSF Charges - \$25.00

17. The landlord testified that they were charged \$25.00 as the pre-authorized payment was returned as NSF.

Analysis

18. I find the pre-authorized payment was returned as NSF and the landlord was charged \$25.00. Under section 15.(2) a landlord can charge a tenant a fee in the same amount as the fee the landlord is charged by the financial institution. The tenant shall pay the landlord \$25.00 for the NSF charges.

Decision

19. The landlord's claim for NSF charges succeeds in the amount of \$25.00.

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 \$637.50 security deposit was paid on March 13, 2019.

Analysis

22. A security deposit was paid in March 2019. As the landlord has been successful in his claim for the payment of rent, late fees and NSF charges he shall retain the \$637.50 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 5: Hearing Expenses - \$20.00

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. The landlord is seeking this cost.

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*. As the landlord's claim was successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

28. The landlord is entitled to the following:

a) Payment of rent	\$850.00
b) Late fees	\$75.00
c) NSF charges	\$25.00
d) Hearing expenses	<u>\$20.00</u>
e) LESS: Security deposit	<u>(\$637.50)</u>
f) Total owing to the landlord	\$332.50

January 9, 2020

Date

Residential Tenancies Section