

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0754-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 1:45 p.m. on October 24, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing by a conference call.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

### **Preliminary Matters**

4. The landlord amended the claim for payment of rent from \$2550.00 to \$2575.00.
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 her. 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 sent electronically on October 1, 2019. The landlord submitted a copy of the e-mail sent to the tenant dated October 1, 2019 and a copy of an e-mail the tenant sent to the landlord on July 21, 2019. The tenant has had 22 days to provide a response. 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 her absence.

### **Issues before the Tribunal**

7. The landlord is seeking the following:
  - a. Payment of rent in the amount of \$2575.00;
  - b. 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 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 - \$2575.00**

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 July 15, 2016 on a month to month tenancy with rent set at \$850.00 per month due on the 15<sup>th</sup> of each month. The last time the rent was paid up to date was in November 2018. Since November 2018 the tenant has made 5 payments towards the rent. On January 4, 2019 she made a payment of \$450.00 towards the rent due on December 15, 2018. On February 1, 2019 she made a payment of \$1225.00; \$400.00 for December 15, 2018 and \$825.00 towards the rent due on January 15, 2019 leaving a balance of \$25.00. On April 16, 2019 she paid \$850.00; the rent due for February 15, 2019. On May 20, 2019 she paid \$850.00; the rent due for March 15, 2019. The last payment was made on June 1, 2019 in the amount of \$850.00; the rent due for April 15, 2019. He testified that on July 27, 2019 he served a termination notice under section 19 of the Act to vacate by

August 10, 2019. The tenant vacated on/or about August 15, 2019. The landlord submitted a copy of the rent ledger (LL #1).

### **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. Based on the rent ledger I find that \$25.00 is owed for January 15, 2019 and \$850.00 is owed for each month for the months of May - July 2019 for a total of \$2550.00. The tenant shall pay the landlord the outstanding rent in the amount of \$2575.00.

### **Decision**

13. The landlord's claim for the payment of rent succeeds in the amount of \$2575.00 as per the following:
  - a) Rent owing for January 15, 2019 .....\$25.00
  - b) Rent owing for May 15, 2019 .....\$850.00
  - c) Rent owing for June 15, 2019 .....\$850.00
  - d) Rent owing for July 15, 2019.....\$850.00
  - e) **Total owing to the landlord .....\$2575.00**

### **Issue 2: Application for Security Deposit**

14. 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**

15. The landlord testified that the tenant paid a \$850.00 security deposit in July 2016.

### **Analysis**

16. \$850.00 was collected as a security deposit. Under section 14.(1)(b) where the residential premises is rented from month to month a landlord shall not demand a security deposit that is more than  $\frac{3}{4}$  of the amount of rent payable for the first month. As the rent was \$850.00 per month, the most the landlord could collect was \$637.50 ( $\$850.00 \times 75\% = \$637.50$ ). The tenant made an overpayment of \$212.50. Under section 14.(3) where a landlord collected a security deposit that is more than the amount permitted under subsection

(1)(b), the overpayment may be applied towards the rent. The landlord shall retain the \$637.50 security deposit and the \$237.50 overpayment as the landlord was awarded rent.

### **Decision**

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

### **Issue 3: Hearing Expenses - \$104.00**

18. 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

19. The landlord paid \$20.00 for the application filing fee and \$84.00 to have the Affidavit of Service notarized. The landlord is seeking these costs. The landlord submitted a receipt from Don Scott McMurray Law Office in the amount of \$84.00.

### **Analysis**

20. The costs the landlord incurred for the application fee and to have the affidavit notarized are considered reasonable expenses 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 \$104.00.

### **Decision**

21. The tenant shall pay the landlord's hearing expenses in the amount of \$104.00.

### **Summary of Decision**

22. The landlord is entitled to the following:

a) Payment of rent .....	\$2575.00
b) Hearing expenses .....	<u>\$104.00</u>
c) Less the security deposit .....	(637.50)

d) Less the overpayment of the security deposit.....(212.50)  
e) Total owing to the landlord .....\$1829.00

January 9, 2020

Date

Residential Tenancies Section