

Residential Tenancies Tribunal

[REDACTED] Decision 19-0809-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:30 p.m. on November 14, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.
3. The tenant, [REDACTED] (known as [REDACTED]) [REDACTED], hereafter referred to as the tenant, participated in the hearing by conference call.

Preliminary Matters

4. The landlord amended the application to reflect [REDACTED] as landlord and the claim for payment of rent from \$1600.00 to \$2400.00.

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$2400.00;
 - c. Hearing expenses.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.

7. Also relevant and considered in this case are Sections 14, 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 - \$2400.00

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

Landlord Position

9. The landlords stated that the tenant moved into the unit on July 1, 2019 for a one year term with rent set at \$800.00 per month due on the 1st of each month. The tenant paid July's rent in the amount of \$800.00 on June 22, 2019 and \$800.00 was paid on September 7, 2019 for August's rent. Since that date they have not received any monies from the tenant.

Tenant Position

10. The tenant testified that she has made two payments of \$800.00 towards the rent. She acknowledges that rent is owed for the months of September, October and November 2019.

Analysis

11. I have reviewed the testimony and evidence of the landlords and the tenant and I have determined that there is one issue that needs to be addressed; is rent owing. I find the tenant acknowledges that she has made two payments of \$800.00 for the rent and rent is owed for the months of September, October and November 2019. Therefore, \$1600.00 (2 months x \$800.00 = \$1600.00) is owed for the months of September and October. Rent for the month of November can only be awarded up and including the day of the hearing (November 14, 2019). The amount of rent owing for November 1 - 14, 2019 is \$368.20 (\$800.00 x 12 months = \$9600.00 ÷ 365 days = \$26.30 per day x 14 days = \$368.20). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$26.30 beginning on November 15, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

12. The landlords' claim for rent succeeds as per the following:

- a. Rent owing for September 2019.....\$800.00
- b. Rent owing for October 2019\$800.00

c. Rent owing for November 1 – 14, 2019.....	<u>\$368.20</u>
d. Total rent owing.....	\$1968.20
e. A daily rate beginning November 15, 2019	\$26.30

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 landlords testified that three termination notices (LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, were served on the tenant. The first notice was served on August 26, 2019 with an effective date of September 3, 2019; the second notice was served on October 8, 2019 with an effective date of October 19, 2019; and the third notice was served on November 11, 2019 with an effective date of November 21, 2019. The first notice was hand delivered and the other two notices were sent by e-mail. The notices were served because the rent had not been paid. To the date of the hearing the tenant still resides in the unit.

Tenant Position

15. The tenant testified that she received the three termination notices.

Analysis

16. 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, rent is in arrears since August 2019. After reviewing the notices I find that the notices given on August 26, 2019 and November 11, 2019 did not allow the required 10 days. The notice given on October 8, 2019 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. This notice was served in accordance with Section 35 of the Act.

Decision

17. The landlords' 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: 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 landlords testified an \$800.00 security deposit was paid on June 22, 2019.

Tenant Position

20. The tenant testified that she paid \$800.00 for the security deposit.

Analysis

21. \$800.00 was paid for a security deposit in June 2019. Under section 14.(1)(c) a landlord cannot demand from a tenant a security deposit that is more than $\frac{3}{4}$ of a month's rent. The maximum amount of the security deposit the landlords could have collected was \$600.00 ($\$800.00 \times 75\% = \600.00). Under section 14.(3) where a landlord collects a security deposit that is more than permitted under subsection (1), the overpayment can be applied towards the rent. As the landlords have been successful in their claim for the payment of rent, they shall retain the \$600.00 security deposit and the overpayment of \$200.00 ($\$800.00 - \$600.00 = \200.00) towards the claim as outlined in this decision and order.

Decision

22. The landlords shall retain the \$600.00 security deposit and the overpayment of \$200.00 as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

23. 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

24. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

25. The cost the landlords 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 landlords' claim was successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

26. The tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Summary of Decision

27. The landlord is entitled to the following:

- a) Payment of rent.....\$1968.20
- b) Hearing expenses\$20.00
- c) **LESS: Security deposit**(600.00)
- d) **LESS: The overpayment of the security deposit**(200.00)
- e) **Total owing to Landlord.....\$1188.20**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$26.30 beginning November 15, 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.

November 18, 2019

Date

[Redacted]
Residential Tenancies Section