

Residential Tenancies Tribunal

[REDACTED] Decision 19-0848-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 03 December 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

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$950.00;
 - 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 did not attend the hearing and I was unable to reach her 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 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 she has been properly served. The landlord submitted an affidavit stating that she had sent the notice of hearing to the tenant by registered mail on 01 November 2019 and the tracking history shows that the tenant signed for that notice on 04 November 2019. She has had 28 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 her absence.

Issue 1: Rent Owing - \$950.00

Relevant Submissions

The Landlords' Position

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with [REDACTED] on 01 December 2014 and a copy of that agreement was submitted with the landlord's application ([REDACTED] #1).
8. That agreement was renewed each successive year and the most recent renewal agreement was submitted with the landlord's application ([REDACTED] #3). According to that agreement, [REDACTED] agreed to rent the unit for a further 1-year term, from 01 December 2018 to 30 November 2019, at a monthly rental rate of \$950.00.
9. On 01 August 2019 [REDACTED]'s lease was assigned to the tenant and a copy of the assignment agreement was also submitted at the hearing ([REDACTED] #2).
10. The landlord submitted rent records at the hearing showing the payments she had received from [REDACTED] since 2014 and from the tenant since 01 September 2019. The records show that the tenant had paid her rent for September, November and December 2019 but she had skipped October's rent payment: \$950.00.
11. The landlord is seeking an order for a payment of rent in the amount of \$950.00.

Analysis

12. I accept the landlord's evidence which shows that the tenant had not paid her rent for October 2019.
13. As the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
14. I calculate the rent owing to the date of the hearing to be \$17.09 (\$950.00 owing for the period ending 30 November 2019 less the credit of \$932.91cr for

December 2019 (\$1035.00 per month (rent increased from \$950.00 to \$1035.00 on 01 December 2019) x 12 months = \$12,420.00 per year ÷ 365 days = \$34.03 per day x 3 days = \$102.09 less the payment of \$1035.00 paid on 01 December 2019)).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$17.09.
16. The tenant shall pay a daily rate of rent in the amount of \$34.03, beginning 04 December 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

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

Analysis

16. 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.

17. 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

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

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

19. With her application, the landlord submitted a copy of a termination notice (■ #5) which she stated she had posted to the tenant's door on 11 October 2019.
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 25 October 2019.
21. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

22. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

23. According to the landlord's rent records, on 11 October 2019 the tenant was in arrears in the amount of \$950.00 and had been in arrears since the beginning of that month.

24. No payments were made to the landlord prior to the effective termination date set out in the notice: 25 October 2019.
25. As the notice meets the timeframe requirements set out in section 19 of the *Act* and as it was properly served, it is a valid notice.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issues 4: Hearing Expenses

28. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expense of \$20.00 for the costs of filing this application.

Issue 5: Security Deposit

29. The landlord's records show that [REDACTED] paid a security deposit of \$700.00 on 18 November 2014.
30. The landlord stated that when the lease was assigned to the tenant she paid [REDACTED] \$700.00 for that deposit which was retained by the landlord as security for any liabilities of the tenant under the assignment.
31. As the landlord's claim has been successful, she shall retain that portion of the security deposit as outlined in this decision and order.

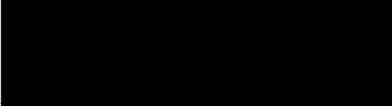
Summary of Decision

32. The landlord is entitled to the following:
 - Authorization to retain \$112.09 of the security deposit, determined as follows:
 - a) Rent Owing\$17.09
 - b) Late Fees\$75.00
 - c) Hearing Expenses\$20.00
 - d) Total Owing to Landlord\$112.09

- A payment of a daily rate of rent in the amount of \$34.03, beginning 04 December 2019 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

04 December 2019

Date



John R. Cook
Residential Tenancies Tribunal