

Residential Tenancies Tribunal

Decision 19-0885-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 09 January 2020 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] [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED] [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 \$1740.00;
 - 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 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 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 she has been properly served. The landlord testified that the tenant was served with notice of this hearing, by e-mail, on 09 December 2019 and she has had 30 days to provide a response. A copy of that e-mail was submitted at the hearing and the landlord stated that the e-mail address was provided by the tenant in the lease agreement. 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.

7. The landlord amended his application at the hearing. He stated that he was no longer seeking an order for possession of the rented premises as the tenant moved out on 25 November 2019.

Issue 1: Rent - \$1740.00

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant commencing 01 September 2019. The agreed rent was set at \$870.00 and the landlord stated that the tenant paid a security deposit of \$436.00.
9. In October 2019 the tenant fell into rental arrears and on 06 November 2019 the landlord issued her a termination notice and a copy of that notice was submitted with his application (█ #1). That 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 17 November 2019. The landlord stated that the tenant moved out sometime prior to 25 November 2019.
10. The landlord submitted rent records with his application (█ #2) showing the payments he had received from the tenant since she had moved in. The landlord pointed out that the tenant had paid her security deposit and the promotional rent for September 2019, but no payments were made for October or November 2019.
11. The landlord is seeking an order for a payment of rent in the amount of \$1740.00 for those 2 months.

Analysis and Decision

12. I accept the landlord's testimony and evidence in this matter and I find that the tenant had not paid rent as required for October and November 2019.
13. The landlord's claim for a payment of rent succeeds in the amount of \$1740.00.

Issue 2: Late fees - \$75.00

Relevant Submissions

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

Analysis

15. Section 15.(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.

16. 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

17. 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: Hearing Expenses

18. The landlord paid \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Issue 4: Security Deposit

19. The landlord stated that the tenant had paid a security deposit of \$436.00 on 23 August 2019. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

20. The landlord is entitled to the following:

- a) Rent Owing \$1740.00
- b) Late Fees \$75.00
- c) Hearing Expenses \$20.00
- d) LESS: Security Deposit (\$436.00)
- e) Total Owing to Landlord \$1399.00

23 April 2020

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal