

Residential Tenancies Tribunal

Decision 19-0919-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 17 February 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 respondents, [REDACTED] [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", 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 \$1266.25;
 - 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, 19 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted affidavits with his application stating the tenants were served, by e-mail, on 29 January 2020 and they have 18 days to provide a response. A copy of that e-mail was also submitted with the landlord's application. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their 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 tenants had abandoned the rental unit sometime prior to 03 January 2020. He also stated that he was now seeking a payment of rent up to that date: 03 January 2020.

Issue 1: Rent - \$1266.25

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenants in February 2019. The agreed rent was set \$835.00 and the landlord stated that the tenants had paid a security deposit of \$626.25. The landlord stated that the rent was paid on the tenant's behalf by the Department of Advanced Education, Skills and Labour (AESL).
9. The landlord issued the tenants a termination notice on 02 December 2019 and a copy of that notice was submitted with his application (█ #2). That notice was issued under sections 19 (notice where failure to pay rent) and 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy) of the *Residential Tenancies Act, 2018* and it had an effective termination date of 14 December 2019.
10. The landlord testified that he found the unit abandoned on 03 January 2020.
11. The landlord submitted rent records at the hearing (█ #1) showing the payments he had received from the tenants since the beginning of the tenancy. According to these records, AESL had paid the rent each month during this tenancy, except for the month of December 2019.
12. The landlord is seeking an order for a payment of rent for December 2019 and for the first 3 days of January 2020.

Analysis

13. I accept the landlord's testimony and evidence in this matter and I find that the tenants had not paid rent as required.

14. The landlord is seeking a payment of rent to 03 January 2020 and I calculate that he is entitled to an award for \$861.94 (\$835.00 for December 2019 and \$26.94 for January 2020 (\$835.00 ÷ 31 days)).

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15. The landlord's claim for a payment of rent succeeds in the amount of \$861.94.

Issue 2: Late fees - \$75.00

Relevant Submissions

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

Analysis

17. 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.

18. 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.*

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19. As the tenants have been in arrears since 02 December 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Hearing Expenses

20. The landlord paid \$20.00 to file this application. As the landlords' claim has been successful, the tenants shall pay this hearing expense.

Issue 4: Security Deposit

21. The landlord stated that the tenants had paid a security deposit of \$626.25 on 06 February 2019. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and order.

Summary of Decision

22. The landlord is entitled to the following:

- a) Rent Owing\$861.94
- b) Late Fees\$75.00
- c) Hearing Expenses\$20.00

- d) LESS: Security Deposit(\$626.25)

- e) Total Owing to Landlord\$330.69

13 May 2020

Date

John R. Cook
Residential Tenancies Tribunal