

Residential Tenancies Tribunal

[REDACTED] Decision 19-0925-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on February 12, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] represented by [REDACTED], hereafter referred to as the landlord participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The landlord amended the claim for the payment of rent from \$1340.00 to \$2825.00.
5. The tenant was not present or represented at the hearing. Prior to the start of the hearing I called the number on file but I was unable to reach him. 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 the hearing scheduled for January 20, 2020 was electronically served on the tenant on December 16, 2019. The landlord submitted a copy of the e-mail along with a copy of the rental agreement. The rental agreement contains the tenant's e-mail address. The hearing was postponed due to our office being closed. The notice of rescheduled hearing was sent by registered mail on January 27, 2020. 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 his absence.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$2825.00;
 - c. 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, 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 - \$2825.00

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 January 1, 2019 for a one year term with rent set at \$595.00 per month due on the 1st of each month. The rent was paid in full up to August 2019. Since August they have received 2 payments. \$445.00 was paid towards September's rent and \$300.00 was paid towards October's rent. The landlord submitted into evidence a copy of the rent ledger (LL #1).

Analysis

12. I have reviewed the testimony and evidence of the landlord. I have determined that there is one issue that needs to be addressed; is rent owing. I find that

since August 2019 the tenants have made 2 payments towards the rent. \$445.00 was paid towards September's rent and \$300.00 was paid towards October's rent. The amount of rent owing as of the date of the hearing is \$150.00 for September 2019; \$295.00 for October 2019 and \$595.00 for each month for the months of November and December 2019 and January 2020. Rent for February 2020 can only be awarded up and including the day of the hearing (February 12, 2020). The amount of rent owing for February 1 - February 12, 2020 is \$234.12 ($\$595.00 \times 12 \text{ months} = \$7140.00 \div 366 \text{ days} = \$19.51 \text{ per day} \times 12 \text{ days} = \234.12). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$19.51 beginning on February 13, 2020 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

13. The landlord's claim for rent succeeds as per the following:
 - a. Rent owing for September 2019.....\$150.00
 - b. Rent owing for October 2019\$295.00
 - c. Rent owing for November 2019.....\$595.00
 - d. Rent owing for December 2019.....\$595.00
 - e. Rent owing for January 2020\$595.00
 - f. Rent owing for February 1 - 11, 2020.....\$234.12
 - g. Total rent owing.....\$2464.12
- h. A daily rate beginning February 13, 2020\$19.51

Issue 2: Vacant Possession of the Rental Premises

14. 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

15. The landlord testified that a termination notice (LL #13) under Section 19 of the *Residential Tenancies Act, 2018*, was posted on the door of the unit on November 15, 2019 to vacate on November 26, 2019 because the rent had been in arrears since September 2019. To the date of the hearing the tenant still resides in the unit.

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 13 above, the rent had been in arrears since September 2019 when the termination notice was served. After reviewing the notice I find the notice allowed the required amount of time and contains all of the necessary information to serve on the tenant as per sections 19.(4) and 34 of the Act. The notice was served in accordance with Section 35 of the Act.

Decision

17. The landlord's 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 landlord testified a \$446.00 security deposit was paid on January 9, 2019.

Analysis

20. A security deposit was paid in January 2019. As the landlord has been successful in the claim for the payment of rent, they shall retain the security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$20.00

22. 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

23. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

Analysis

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

Decision

25. The tenant shall pay the landlord's hearing expenses in the amount of \$20.00.

Summary of Decision

26. The landlord is entitled to the following:

- a) Payment of rent.....\$2464.12
- b) Hearing expenses\$20.00
- c) **LESS: Security deposit(446.00)**
- d) **Total owing to the Landlord\$2038.12**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$19.51 beginning February 13, 2020 and continuing until the day the landlord obtains possession of the rental unit.
- g) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

February 12, 2020

Date

Residential Tenancies Section