

## **Residential Tenancies Tribunal**

[REDACTED] Decision 20-0926-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 1:20 p.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 respondents, [REDACTED] and [REDACTED], hereafter referred to as the tenants, did not attend the hearing.

### **Preliminary Matter:**

4. The landlord discontinued the claim for vacant possession as the tenants vacated on December 3, 2019.
5. The tenants were not present or represented at the hearing. Prior to the hearing I called the telephone number on file but I was unable to reach them. 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 21, 2020 was electronically served on the tenants on December 6, 2019. The landlord submitted a copy of the e-mail dated December 6, 2019 along with a copy of the lease agreement (LL #1). The lease agreement contains the tenants' e-mail address. The hearing for January 21, 2020 was postponed as our office was closed. The notice of the rescheduled hearing was sent by Xpresspost on January 27, 2020. As the tenants were 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 their absence.

### **Issues before the Tribunal**

7. The landlord is seeking the following:
  - a. Payment of rent in the amount of \$2600.00;
  - b. 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 and 19 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 - \$2600.00**

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 tenants moved into the unit on August 1, 2019 for a one year term with rent set at \$1300.00 per month due on the 1<sup>st</sup> of each month. The tenants paid the rent for the month of August 2019 on July 26, 2019 and the rent for September 2019 was paid on September 26, 2019. The rent was paid through interac e-transfer. Since the rent was paid on September 26, 2019 she has not received any monies from the tenants. On October 10, 2019 she served a termination notice on the tenants under section 19 of the *Residential Tenancies Act* to vacate on October 22, 2019. Another termination notice was served on October 23, 2019 to vacate on November 4, 2019 for the same reason. A third termination notice under section 19 was served on the tenants on November 8, 2019 to vacate on November 19, 2019. All of the

notices were posted on the door and a copy of the notice was sent was e-mail. The tenants vacated on December 3, 2019.

12. The landlord presented into evidence a copy of the rent ledger (LL #2) and a copy of the three termination notices (LL #3).

### **Analysis**

13. 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 the tenants moved into the unit on August 1, 2019 and the rent was paid for the months of August and September 2019. The rent was not paid for October and November 2019. I also find that the landlord served three terminations notices under section 19 of the Act. The tenants vacated the unit on December 3, 2019.

### **Decision**

14. The landlord's claim for rent succeeds in the amount of \$2600.00.

a) Rent owing for October 2019 .....	\$1300.00
b) Rent owing for November 2019.....	<u>\$1300.00</u>
c) <b>Total owing to the Landlord .....</b>	<b><u>\$2600.00</u></b>

### **Issue 2: Application for Security Deposit**

15. 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**

16. The landlord testified that the tenants paid a \$910.00 security deposit on June 29, 2019.

### **Analysis**

17. A \$910.00 security deposit was paid in June 2019. The landlord shall retain the security deposit as she has been successful in the claim for the payment of rent. The interest rate on security deposits for 2019 is 0%.

## **Decision**

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

### **Issue 3: Hearing Expenses - \$20.00**

19. 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

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

#### **Analysis**

21. 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 tenants are responsible to pay the landlord's hearing expenses in the amount of \$20.00.

## **Decision**

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

### **Summary of Decision**

23. The landlord is entitled to the following:

a) Payment of rent.....	\$2600.00
b) Hearing expenses .....	\$20.00
c) <b>Less the security deposit .....</b>	<b>(910.00)</b>
<b>d) Total owing to the Landlord.....</b>	<b><u>\$1710.10</u></b>

April 15, 2020

Date

Residential Tenancies Section