

Residential Tenancies Tribunal

[REDACTED] Decision 19-0932-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 10:20 a.m. on January 31, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as tenant1, participated in the hearing. The respondent, [REDACTED], hereafter referred to as tenant2, did not attend the hearing but was represented by [REDACTED].

Preliminary Matters

4. The landlord amended the claim for the payment of rent from \$2133.35 to \$3583.35.
5. Tenant1 stated that tenant2 was not part of the claim. She was not a part of the agreement and there was no communication between tenant2 and the landlord. The rent was paid from his account.
6. The landlord testified that both of the tenants came to his office on July 5, 2019. They paid ½ of the security deposit and the rent for July and they discussed when the remainder of the security deposit would be paid. He issued a receipt for the money. He submitted a copy of the receipt (LL #4).

7. Based on the receipt issued, I find that the agreement was between the landlord and both of the tenants.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$3583.35;
 - c. Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 14, 15, 19, 24, 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 - \$3583.35

11. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

12. The landlord testified that the tenants moved into the unit in early July 2019 on a verbal month to month tenancy to start on July 15, 2019. The rent was set at \$1100.00 per month due on the 1st and 15th of the month. The tenants paid the \$550.00 due on July 15, 2019 prior to moving into the unit. Since receiving that payment, the tenants have made the following payments towards the rent:

August 7, 2019	\$550.00
August 25, 2019	\$274.00
September 7, 2019	\$550.00
September 23, 2019	\$300.00
October 3, 2019	\$200.00
October 16, 2019	\$200.00
November 25, 2019	\$340.00
December 11, 2019	\$200.00

13. The landlord also testified that he is deducting \$402.65 from the rent as the tenants paid that amount to have the unit cleaned at the start of the tenancy. The landlord submitted a copy of the rent ledger (LL #4).

Tenant Position

14. The tenant acknowledges that these amounts were paid but he testified that he made another payment or two but he cannot find copies of the transactions. He said he is withholding the rest of the rent because the landlord did not provide a copy of the Act.

Analysis

15. I have reviewed the testimony and evidence of the landlord and tenant1. I have determined that there is one issue that needs to be addressed; is rent owing. I find tenant1 said they withheld rent because the landlord did not provide a copy of the Residential Tenancies Act. There is no provision in the Act to allow a tenant to withhold rent because the tenant was not provided a copy of the Act. The rent has been in arrears since August 2019. The amount of owing since August is as follows:

Rent for August 2019	\$276.00
Rent for September 2019	\$250.00
Rent for October 2019	\$400.00
Rent for November 2019	\$760.00
Rent for December 2019	\$900.00
Rent for January 2019	\$1100.00

16. I also find that the landlord deducted \$402.65 from the amount owing as the tenants paid to have the unit cleaned at the start of the tenancy. Additionally, the tenants are responsible for rent on a daily basis in the amount of \$36.07 ($\$1100.00 \times 12 \text{ months} = \$13,200.00 \div 366 \text{ days} = \36.07) beginning on February 1, 2020 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

17. The landlord's claim for rent succeeds as per the following:

a. Rent owing for August 2019	\$276.00
b. Rent owing for September 2019.....	\$250.00
c. Rent owing for October 2019	\$700.00
d. Rent owing for November 2019.....	\$760.00
e. Rent owing for December 2019.....	\$900.00
f. Rent owing for January 2020	\$1100.00
g. Less the cost for cleaning.....	<u>(402.65)</u>
h. Total rent owing.....	\$3583.35

- i. A daily rate beginning February 1, 2020\$36.07

Issue 2: Vacant Possession of the Rental Premises

- 18. An application for vacant possession is determined by the validity of the termination notice issued by the landlord. In this case, 2 termination notices were issued; (i) under section 19 – nonpayment of rent; and (ii) under section 24 – interference with peaceful enjoyment.

Landlord Position

- 19. The landlord testified that a termination notice (LL #1) under Section 19 of the *Residential Tenancies Act, 2018*, was sent by e-mail to tenant1 on November 7, 2019 to vacate the unit on November 18, 2019 because the rent was arrears since August 2019. Since serving the termination notice the rent has not been paid up to date.
- 20. The landlord further testified that he served a second termination notice under section 24 of the Act on the tenants on December 31, 2019 to vacate on January 6, 2020. The tenant living in the basement unit showed up at his residence on December 30, 2019 in tears. She has not been back to her unit since that date. She told him that an altercation took place between herself and tenant1 about the snow clearing. Tenant1 swore on her and he threatened her.
- 21. The landlord submitted a copy of the termination notice (LL #1) and the e-mail sent to the tenant on November 7, 2019 along with a copy of an e-mail (LL #2) from tenant1. The e-mail the landlord sent to the tenant states there was an attachment to the e-mail and the e-mail tenant1 sent to the landlord states you are giving me an eviction.

Tenant Position

- 22. Tenant1 testified that he received an e-mail from the landlord on November 7, 2019 but there was no attachment. He acknowledges sending the e-mail to the landlord on November 7, 2019.
- 23. Tenant1 testified that on December 30, 2019 he was outside snow shoveling when the downstairs tenant came out to get in her car. She told him not to put the snow on the lawn. To put it on the other side of the step. He said he was not walking that distance to put the snow by the step. She started yelling at him. He then said to her that you better watch who you are talking to and who you are yelling at. She then took her phone out and said is that a threat. She then got in her car and left.

Analysis

24. 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 17 above, the rent has been in arrears since August 2019. 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. I also find that the termination notice was served on tenant1 as the e-mail the landlord sent to tenant1 contained an attachment term110719.PDF. Further, tenant1 sent an e-mail to the landlord that same day stating you are giving me an eviction notice. As the termination notice met the criteria as required by sections 19.(4) and 34 and was served as required by section 35, the termination notice is a valid notice.
25. With regard to the termination notice the landlord served under section 24 where the tenant contravenes the Act by interfering with the rights of the upstairs tenants. I find the landlord served tenant1 with a termination notice on December 31, 2019 as the result of an incident that took place between tenant1 and the downstairs unit in the driveway on December 30, 2019. The landlord did not support the claim with substantiating evidence that tenant1 made threats against the downstairs tenant. Therefore, the termination notice issued on December 31, 2019 is not a valid notice.

Decision

26. The landlord's claim for vacant possession under section 19 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

27. 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

28. The landlord testified a \$275.00 security deposit was paid on July 5, 2019.

Tenant Position

29. Tenant1 acknowledges a portion of the security deposit was paid.

Analysis

30. A security deposit was paid in July 2019. As the landlord has been successful in the claim for the payment of rent, he shall retain the \$275.00 security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$20.00

32. 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

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

Analysis

34. 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 cover the cost of the hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

36. The landlord is entitled to the following:

a) Payment of rent.....	\$3583.35
b) Hearing expenses	\$20.00
c) LESS: Security deposit	(\$275.00)

- d) **Total owing to Landlord.....****\$3328.35**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of \$36.07 beginning February 1, 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 6, 2020
Date

[REDACTED]
Residential Tenancies Section