

Residential Tenancies Tribunal

[REDACTED] Decision 20-0009-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on February 4, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The landlords amended the claim for the payment of rent from \$1000.00 to \$2000.00.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the numbers on file for the tenant but I was unable to reach her. 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 landlords show that the notice of this hearing was served electronically on the tenant on January 7, 2020 and the tenant has had 27 days to provide a response. The landlords submitted a copy of the e-mail along with a copy of the lease agreement. The lease agreement contains the tenant's e-mail address. 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 her absence.

Issues before the Tribunal

7. The landlords are seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$2000.00;
 - c. Late fees in the amount of \$75.00;
 - d. 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, 15, 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 - \$2000.00

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 landlords testified that the tenant moved into the unit on September 15, 2019 for a one year term with rent set at \$1000.00 per month due on the 15th of each month. The tenant paid the rent for the months of September, October and November 2019 but November's rent was not paid until December 13, 2019. Since receiving November's rent they have not received any monies from the tenant. The landlord's submitted a copy of the rent ledger (LL #3).

Analysis

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

find the rent was paid in full for the months of September – November 2019. The tenant has not paid any monies towards the rent for December 2019 and January 2020. \$1000.00 is owed for rent due on December 15, 2019. Rent due on January 15, 2020 can only be awarded up and including the day of the hearing (February 4, 2020). The amount of rent owing for January 15 - February 4, 2020 is \$688.59 ($\$1000.00 \times 12 \text{ months} = \$12,000.00 \div 366 \text{ days} = \$32.79 \text{ per day} \times 21 \text{ days} = \688.59). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$32.79 beginning on February 5, 2020 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

13. The landlords' claim for rent succeeds as per the following:
 - a. Rent owing for December 15, 2019.....\$1000.00
 - b. Rent owing for January 15 – February 4, 2020\$688.59
 - c. Total rent owing.....\$1688.59
 - d. A daily rate beginning February 5, 2020\$32.79

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 landlords testified that a termination notice (LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was sent by e-mail to the tenant on December 21, 2019 to vacate on January 2, 2020 because they had not received the rent that was due on December 15, 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 due on December 15, 2019 had not been paid. 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 landlords' claim for vacant possession succeeds. The landlords are 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: Late fees - \$75.00

Landlord Position

18. The landlords testified they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since December 2019.

Analysis

19. The rental arrears has been established in paragraph 13 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has been in arrears since December 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

20. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 4: Application for Security Deposit

21. 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

22. The landlords testified a \$500.00 security deposit was paid on September 12, 2019.

Analysis

23. A security deposit was paid in September 2019. As the landlords have been successful in the claim for the payment of rent and late fees, they shall retain the \$500.00 security deposit as outlined in this decision and order.

Decision

24. The landlords shall retain the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

25. 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

26. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

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

Decision

28. The tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Summary of Decision

29. The landlords are entitled to the following:

- a) Payment of rent.....\$1688.59
- b) Late fees\$75.00
- c) Hearing expenses\$20.00

- d) **LESS: Security deposit** **(500.00)**
- e) **Total owing to Landlord.....** **\$1283.59**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$32.79 beginning February 5, 2020 and continuing until the day the landlord obtains possession of the rental unit.
- h) 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