

Residential Tenancies Tribunal

Decision 20-0042-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:15 p.m. on February 17, 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 Matter:

4. The landlord discontinued the claim for vacant possession as the tenant vacated on February 1, 2020.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the telephone number on file but I was unable to reach the tenant. 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 was electronically served on the tenant on February 4, 2020. The landlord submitted a copy of the e-mail dated February 4, 2020 along with a copy of the lease agreement (LL #1). The lease agreement contains the tenant's e-mail address. The tenant has had 12 days to provide a response. 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. Payment of rent in the amount of \$2088.00;
 - b. Late fees in the amount of \$75.00;
 - 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, 15 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 - \$2088.00

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 November 28, 2018 for a one year term to start on December 1, 2018. The rent was set at \$1100.00 per month due on the 1st of each month. The rent was paid in full up to November 2019. The tenant made a payment of \$274.00 on November 26, 2019 leaving a credit of \$112.00. Since November 26, 2019 the tenant has not made any payments towards the rent. A termination notice under section 19 of the *Residential Tenancies Act* was served on the tenant on January 9, 2020 to vacate on January 20, 2020. The tenant vacated on February 1, 2020.
12. The landlord presented into evidence a copy of the termination notice (LL #2) and a copy of the rent ledger (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 based on the rent ledger that the tenant had a credit of \$112.00 at the end of November 2019. The tenant did not make any payments towards the rent during the months of December 2019 and January 2020. The tenant vacated on February 1, 2020. The amount of rent owing for December 2019 is \$988.00 (\$1100.00 - \$112.00 = \$988.00) and \$1100.00 for January 2020 for a total of \$2088.00 (\$988.00 + \$1100.00 = \$2088.00).

Decision

14. The landlord's claim for rent succeeds in the amount of \$2088.00.

a) Rent owing for December 2019.....	\$988.00
b) Rent owing for January 2020	<u>\$1100.00</u>
c) Total owing to the Landlord	<u>\$2088.00</u>

Issue 2: Late fees - \$75.00

Landlord Position

15. The landlord testified she is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since December 2019.

Analysis

16. The rental arrears has been established in paragraph 14 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

17. The claim for late fees succeeds in the amount of \$75.00.

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 that the tenant paid an \$825.00 security deposit on October 7, 2018.

Analysis

20. An \$825.00 security deposit was paid in October 2018. The landlord shall retain the security deposit as she has been successful in the claim for the payment of rent and late fees. The interest rate on security deposits for the period 2018 - 2019 is 0%.

Decision

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

Issue 3: 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 pay the landlord's 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.....	\$2088.00
b) Payment of late fees	\$75.00
c) Hearing expenses	\$20.00
d) Less the security deposit	<u>(825.00)</u>
e) Total owing to the Landlord.....	<u>\$1358.00</u>

April 15, 2020

Date

Residential Tenancies Section