

Residential Tenancies Tribunal

[REDACTED] Decision 20-0312-04

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:45 p.m. on August 17, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as landlord, participated in the hearing through a conference call. The applicant, [REDACTED], did not attend the hearing but she was represented by [REDACTED].
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 \$790.00 to \$1260.00 up to the end of August 2020.
5. The tenant was not present or represented at the hearing. I called the number on file for the tenant 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. [REDACTED] attended the hearing and he affirmed that the Application for Dispute Resolution was served on [REDACTED], a person living with the tenant, on August 6, 2020 at approximately 8:30 p.m. The tenant has had 10 days to provide a response to the scheduled hearing. 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 landlords are seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$1260.00;
 - 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 - \$1260.00

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 December 13, 2017 for a one year term to begin on January 1, 2018 with rent set at \$800.00 per month due on the 1st of each month. The tenant paid a prorate amount for December 2017. Rent was paid in full up to March 2020. Since March 2020 the landlords have received the following payments:

April 30, 2020	\$500.00
May 29, 2020	\$300.00
June 5, 2020	\$310.00
June 11, 2020	\$300.00
June 21, 2020	\$200.00
July 2, 2020	\$300.00

July 11, 2020	\$300.00
July 21, 2020	\$200.00
August 4, 2020	\$330.00

The landlord submitted a copy of the rent ledger (LL #2).

Analysis

12. I have reviewed the testimony and evidence of the landlord and I have determined that there is one issue that needs to be addressed; is rent owing. I find that the rent was paid in full up to March 2020. The tenant fell into arrears in April 2020 and there was a balance at the end of each month thereafter. At the end of July 2020 there was a balance of \$790.00. The payment in the amount of \$330.00 received on August 4, 2020 will be applied to the outstanding rent leaving a balance of \$460.00 ($\$790.00 - \$330.00 = \460.00) owing up to the end of July 2020. Rent due on August 1, 2020 can only be awarded up and including the day of the hearing (August 17, 2020). The amount of rent owing for August 1 - 17, 2020 is \$445.91 ($\$800.00 \times 12 \text{ months} = \$9600.00 \div 366 \text{ days} = \$26.23 \text{ per day} \times 17 \text{ days} = \445.91). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$26.23 beginning on August 18, 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 up to July 31, 2020	\$460.00
b. Rent owing for August 1 - 17, 2020.....	<u>\$445.91</u>
c. Total owing	\$905.91
d. A daily rate beginning August 18, 2020.....	\$26.23

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 #3) under Section 19 of the *Residential Tenancies Act, 2018*, was hand delivered to the tenant on July 10, 2020 to vacate on July 26, 2020 because the rent was in arrears since April 2020. 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 12 above, the rent was in arrears when the 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 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 landlord testified that they are seeking payment of late fees in the amount of \$75.00 as the rent is in arrears since April 2020.

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 April 2020 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 landlord testified that a \$600.00 security deposit was paid in December 2017.

Analysis

23. A security deposit was paid in December 2017. As the landlords have been successful in the claim for the payment of rent and late fees, they shall retain the 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 5: 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 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 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.....\$905.91
- b) Late fees\$75.00
- c) Hearing expenses\$20.00
- d) **Less the security deposit****(600.00)**
- e) **Total owing to the landlords****\$400.91**
- f) Vacant Possession of the rented premises
- g) A daily rate of rent in the amount of \$26.23 beginning August 18, 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.

August 18, 2020

Date

_____ Residential Tenancies Section