

Residential Tenancies Tribunal

Decision 19-0018-02

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:05 p.m. on August 21, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing by conference call.
3. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing by conference call.

Preliminary Matters

4. The landlord amended the claim for payment of rent from \$5727.00 to \$2000.00.

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$2000.00.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case are Sections 19, 34 and 35 of the Act.

Issue 1: Payment of rent - \$2000.00

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

Landlord Position

9. The landlord stated that the tenants moved into the unit on October 6, 2017 on a month to month tenancy with rent set at \$500.00 per month due on the 6th of each month. A security deposit in the amount of \$250.00 was paid on October 6, 2017.
10. The landlord testified that a hearing was held on April 8, 2019 and he was awarded rent in the amount of \$3727.00. This amount includes the rent due for April 6, 2019. Since the hearing was held in April 2019 he has not received any monies from the tenant towards the rent due for May, June, July and August 2019. In support of the claim the landlord submitted a copy of the rent ledger for the period October 6, 2017 – July 6, 2019 (LL #2).

Tenant Position

11. The tenant testified that she has not paid the rent for the months of May, June, July and August 2019.

Analysis

12. I have reviewed the testimony and evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the payment of rent. I find the rent is due on the 6th of each month and the tenant has not paid the rent for the months of May, June, July and August. Rent is owed in the amount of \$1500.00 (\$500.00 x 3 months = \$1500.00) for the months of May – July 2019. Rent for the month of August can only be awarded up and including the day of the hearing (August 21, 2019). The rent owing for August 6 - 21, 2019 is \$263.75 (\$500.00 x 12 months = \$6,000.00 ÷ 365 days = \$16.44 per day x 16 days = \$263.04). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$16.44 beginning on August 22, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

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

- a. Rent owing up to August 5, 2019\$1500.00
- b. Rent owing for August 6 - 21, 2019.....\$263.75
- c. Total arrears.....\$1763.75

d. A daily rate beginning August 22, 2019 \$16.44

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 a termination notice was hand delivered by [REDACTED] to the tenant on June 19, 2019 under Section 19 of the *Residential Tenancies Act, 2018*, to vacate on July 2, 2019 because the rent has been in arrears for a long time. The landlord submitted a copy of the termination notice dated June 19, 2019 and an affidavit signed by [REDACTED] that she served the termination notice on June 19, 2019 (LL #1). To the date of the hearing the tenant still resides in the unit.

Tenant Position

16. The tenant testified that she received a termination notice dated June 20, 2019 (T #1) from [REDACTED]. The notice was to take effect July 2, 2019. She also testified that they were in the process of moving out of the unit.

Analysis

17. 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 is in arrears. I find the termination notice the landlord presented was dated June 19, 2019 and the notice the tenant presented was dated June 20, 2019. Both of the notices had the effective date of July 2, 2019. I also find both of the notices 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. Further, the notice was served in accordance with section 35 of the Act. The termination notice is a valid notice.

Decision

18. The landlord's claim for vacant possession 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

19. 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

20. The landlord testified a \$250.00 security deposit was paid on October 6, 2017.

Tenant Position

21. The tenant testified that she paid a security deposit in the amount of \$250.00.

Analysis

22. A security deposit was paid in October 2017. As the landlord has been successful in his claim for the payment of rent, he shall retain the \$250.00 security deposit as outlined in this decision and order.

Decision

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

Summary of Decision

24. The landlord is entitled to the following:

- a) Payment of rent \$1763.75
- b) **LESS: Security deposit (\$250.00)**
- c) **Amount owing to the landlord \$1513.75**
- d) Vacant Possession of the rented premises

- e) A daily rate of rent in the amount of \$16.44 beginning August 22, 2019 and continuing until the day the landlord obtains possession of the rental unit.
- f) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.

August 28, 2019

Date

[REDACTED]
Residential Tenancies Section