

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0026-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 9:30 a.m. on February 5, 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.
3. The tenant, [REDACTED], hereafter referred to as tenant1, participated in the hearing by telephone. [REDACTED], hereafter referred to as tenant2, did not attend the hearing.

### **Preliminary Matters**

4. The landlord amended the claim for payment of rent from \$1050.00 to \$2100.00.

### **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 \$2100.00
  - c. Hearing expenses.

### **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 and 34 of the Act and *Policy 12-1: Recovery of Fees: Filing and Hearing Expenses*.

### **Issue 1: Payment of rent - \$2100.00**

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 August 1, 2016 on a month to month tenancy with rent set at \$1050.00 per month due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$200.00 was paid in August 2016.
10. The landlord testified she received the rent up to December 2018. The rent for December was paid in two installments; \$800.00 and \$250.00. Since the rent was paid in December she has not received any monies towards the rent.

#### Tenant Position

11. Tenant1 acknowledged that they have not paid any rent since December 2018. She said there is an electrical problem in the unit.

#### **Analysis**

12. I have reviewed the testimony and evidence of the landlord and tenant1. Tenant1 acknowledges the rent has not been paid for the months of January and February 2019. Rent for the month of February can only be awarded up and including the day of the hearing (February 5, 2019). The amount of rent owing for February is \$172.60 ( $\$1050.00 \times 12 \text{ months} = \$12,600.00 \div 365 \text{ days} = \$34.52 \text{ per day} \times 5 \text{ days} = \$172.60$ ). Additionally, the tenants are responsible for rent on a daily basis in the amount of \$34.52 beginning on February 6, 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 for January 2019 ..... \$1050.00
  - b. Rent owing for February 1 – 5, 2019 ..... \$172.60
  - c. Total arrears ..... \$1222.60
  - d. A daily rate beginning February 6, 2019 ..... \$ 34.52

## **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 is seeking vacant possession of the rental unit.
16. The landlord testified she served a termination notice (Exhibit L #2) under Section 19 of the *Residential Tenancies Act, 2018*, on January 14, 2019 to vacate on January 25, 2019 because she had not received the rent for the month of January 2019. To the date of the hearing the tenants still reside in the unit.

### Tenant Position

17. Tenant1 testified she received the termination notice. She said they are moving out of the unit next week.

### **Analysis**

18. 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. After reviewing the notice I find the notice allowed the required amount of time and contains all of the needed information to serve on the tenant as per sections 19.(4) and (34) of the Act. Also, the tenant acknowledges receiving the notice.

### **Decision**

19. 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**

20. 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:**

21. The landlord testified a \$200.00 security deposit was paid prior to the tenants moving into the unit.

**Tenant Position**

22. Tenant1 testified a \$600.00 security deposit was paid in August 2016.

**Analysis**

23. A security deposit was paid in August 2016. Tenant1 did not present any documentation to show a \$600.00 security deposit was paid. I accept the landlord's testimony a \$200.00 security deposit was paid. As the landlord has been successful in her claim for rent she shall retain the \$200.00 security deposit as outlined in this decision and order.

**Decision**

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

**Issue 4: Hearing Expenses**

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 and Hearing Expenses*.

**Landlord Position**

26. The landlord paid an application filing fee in the amount of \$20.00. The landlord is 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 and Hearing Expenses*. Therefore, I find the tenant is responsible to cover the cost of the application filing fee.

## Decision

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

## Summary of Decision

29. The landlord is entitled to the following:

- a) Rent owing ..... \$1222.60
- b) Hearing expenses ..... \$ 20.00
- c) **LESS: Security deposit ..... (\$200.00)**
- d) **Total Owing to Landlord ..... \$1042.60**
- e) Vacant Possession of the rented premises
- f) A daily rate of rent in the amount of 35.52 beginning February 6, 2019 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 14, 2019

Date

 Residential Tenancies Section