

## Residential Tenancies Tribunal

[REDACTED] Decision 19-0044-01

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:25 a.m. on August 20, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing by conference call.
3. The tenant, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

### Preliminary Matters

4. The landlord discontinued the claim for vacant possession as they took back possession of the property on August 17, 2019.
5. The tenant was not present or represented at the hearing. 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 scheduled for July 16, 2019 was personally served on the tenant on June 17, 2019 and the tenant has had 28 days to provide a response. The notice of rescheduled hearing was sent by registered mail on August 11, 2019. 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 landlord is seeking the following:
  - a. Payment of rent in the amount of \$3380.00.

## **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 and 19 of the Act.

### **Issue 1: Payment of rent - \$3380.00**

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 April 1, 2018 and signed a rental agreement for a one year term with rent set at \$835.00 per month due on the 1<sup>st</sup> of each month. The rental agreement was renewed for another year beginning April 1, 2019 with rent set at \$845.00 per month. She testified that the tenant paid the rent for April 2019 on April 25, 2019. Since receiving that rent they have not received any monies from the tenant. On June 3, 2019 they hand delivered a termination notice under section 19 (failure to pay rent) to the tenant to vacate on June 14, 2019. On August 16, 2019 they posted a notice of abandonment on the door of the unit and they took possession of the unit on August 17, 2019.
12. The landlord presented into evidence a copy of the termination notice dated June 3, 2019 (LL #1), a copy of the rental agreement (LL #2) and a copy of the rent ledger (LL #3).

## **Analysis**

13. 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 the rent has not been paid for the months of May, June, July and August 2019. The landlord served a termination notice to vacate on June 14, 2019. Further, the landlord took back possession of the unit on August 17, 2019. The landlord would be entitled to the rent for the months of May – July 2019 in the amount of \$2535.00 (\$845.00 x 3 months = \$2535.00) and for the period August 1 -17, 2019 \$472.26 (\$845.00 x 12 months = \$10,140.00 ÷ 365 days =

$\$27.78 \times 17 \text{ days} = \$472.26$  for a total of  $\$3007.26$  ( $\$2535.00 + \$472.26 = \$3007.26$ ).

## **Decision**

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

a. Rent owing up to July 31, 2019.....	\$2535.00
b. Rent owing for August 1 – 17, 2019 .....	<u>\$472.26</u>
c. Total rent owing .....	\$3007.26

## **Issue 2: Application for Security Deposit**

15. 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

16. The landlord testified a \$420.00 security deposit was paid on February 15, 2018.

### **Analysis**

17. A security deposit was paid in February 2018. As the landlord has been successful in their claim for the payment of rent, they shall retain the \$420.00 security deposit as outlined in this decision and order.

## **Decision**

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

## Summary of Decision

19. The landlord is entitled to the following:

- a) Payment of rent ..... \$3007.26
- b) **Less the security deposit ..... (420.00)**
- c) **Total owing to Landlord ..... \$2587.26**

September 27, 2019

Date

 Residential Tenancies Section