

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-372-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 06 June 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$800.00;
 - b. An order for a payment of utilities in the amount of \$350.00;
 - c. An order for vacant possession of the rented premises; and
 - d. Authorization to retain the security deposit.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. This Tribunal’s policies

concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 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 she has been properly served. The landlord testified that he had served the tenant with notice of this hearing, by text-message, on 21 May 2019 and she has had 14 days to provide a response. The landlord also submitted a copy of a screenshot of that text-message as well as a screenshot of a text-conversation he had had with the tenant at that cellular number. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended his application at the hearing and stated that he was now only seeking \$400.00 in rental arrears. The landlord also struck his claim for utilities.

Issue 1: Rent Owing - \$400.00

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 28 April 2019. The agreed rent is set at \$800.00, due on the first day of each month, and was paid to the landlord, on the tenant's behalf, by the [REDACTED]
9. The landlord stated that he has received 3 payments from [REDACTED] and he submitted copies of the cheque stubs at the hearing. The first payment he had received was for \$372.00 and it was paid on 30 April 2019 ([REDACTED] #3). That payment covered the security deposit.
10. The other 2 payments were for \$400.00 each and they were paid on 13 May 2019 ([REDACTED] #2) and 30 May 2019 ([REDACTED] #1), respectively. The landlord stated that this first payment was payment for rent for the second half of May 2019 and the second payment was intended for the first 2 weeks of June 2019.
11. The landlord is seeking an order for a payment of \$400.00—the remaining amount of rent that is owed for May 2019.

Analysis

12. I accept the landlord's claim that he had only received 2 payments of \$400.00 each since the tenant moved into the unit. Both of these payments were made during May 2019 and I therefore find that no rent is owing for that month.

13. No payments have been received for June 2019 and I therefore find that the landlord is entitled to a payment of rent for that month. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
14. I calculate the amount owing to be \$157.80 (\$800.00 per month x 12 months = \$9600.00 per year ÷ 365 days = \$26.30 per day x 6 days = \$157.80).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$157.80.
16. The tenant shall pay a daily rate of rent in the amount of \$26.30, beginning 07 June 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

17. With his application, the landlord submitted a termination notice (█#4) which he stated he had posted to the tenant's door on 06 May 2019. He stated that he had also sent that notice to her as a text-message on that day.
16. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 18 May 2019.
17. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

18. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b),*

...

(b) *where the residential premises is*

(i) *rented from month to month,*

(ii) *rented for a fixed term, or*

(iii) *a site for a mobile home, and*

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

19. According to the landlord's testimony, on 06 May 2019, the day the notice was issued to the tenant, she was in arrears in the amount of \$800.00. The landlord did receive a cheque for \$400.00 on 13 May 2019, but this only brought the balance down to \$400.00 and she remained in arrears up to the effective termination date set out in the notice.
20. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 3: Security Deposit

23. The landlord submitted a copy of a cheque stub (█#3) showing he had received a security deposit of \$372.00. As the landlord's claim for rent has been successful, he shall retain \$157.80 of the security deposit as outlined in this decision and order.

Summary of Decision

24. The landlord is entitled to the following:
 - Authorization to retain \$157.80 of the security deposit.
 - A payment of a daily rate of rent in the amount of \$26.30, beginning 07 June 2019 and continuing to the date the landlord obtains possession of the rental unit,
 - An order for vacant possession of the rented premises,

- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

14 June 2019

Date



John
Residential Tenancies Tribunal