

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-383-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 25 June 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”.
3. The respondent, [REDACTED] hereinafter referred to as [REDACTED], attended the hearing. His co-respondent, [REDACTED] hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1400.00;
 - b. An order for a payment of late fees in the amount of \$61.00;and
 - c. An order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are Sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach him 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 he has been properly served. The landlord submitted an affidavit stating that the tenant was personally served with notice of the hearing on 07 June 2019 and he has had 19 days to provide a response. 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 his absence.
8. The landlord amended her application at the hearing and stated that she was seeking an additional \$700.00 in rent for a total claim of \$2100.00. She also stated that she was now seeking the maximum late fee of \$75.00.

Issue 1: Rent Owing - \$2100.00

Relevant Submissions

The Landlords' Position

9. The landlord stated that she had entered into a 1-year, fixed-term lease with ■■■ commencing 15 January 2018. The agreed rent was set at \$700.00 per month and it is acknowledged in the lease that ■■■ had paid a security deposit of \$525.00.
10. On 30 November 2018 ■■■ sent an e-mail to the landlord ■■■ #2) informing her that he would not be renewing his lease and he indicated that he would vacate the unit by 31 December 2018. In response to that e-mail, the landlord wrote: "Thank you we will contact you closer to the end of December to schedule a move out inspection". No inspection was ever carried out.
11. The landlord stated that after ■■■ moved out, he allowed the tenant to move into the unit as his sublessee. The landlord stated that ■■■ did not have her permission to sublet the unit to the tenant and she stated that she never received any rental application from the tenant nor did she enter into any written or verbal agreement with him. She also pointed out that there was no move-out inspection with ■■■ after he vacated and his name was never removed from the lease.
12. With her application, the landlord submitted rent records showing the payments she had received since this tenancy began. These records show that ■■■ had

paid his rent every month since he moved into the unit and his rent was paid and up-to-date for the period ending 31 December 2018.

13. These records also show that for January, February and March 2019 the landlord received rent payments from the tenant, not ■■■. The landlord argued that although the records show that she had received payments from the tenant, this did not entail that she had a landlord-tenant relationship with him.
14. The records show that no rent was paid for April, May or June 2019 and the landlord is seeking an order for a payment of rent for those 3 months: \$2100.00.

■■■ Position

15. ■■■ stated that he would not have allowed the tenant to move into the rental unit without permission from the landlord. He stated that the tenant had a verbal agreement with the landlord that the tenant could take over his lease after he vacated. He denied that the tenant was his sublessee and instead claimed that the lease was assigned to the tenant.

Analysis

16. I was not persuaded that ■■■ had sublet his apartment to the tenant. ■■■ stated that he had not entered into a landlord-tenant relationship with the tenant and he did not receive any rent from him after the tenant moved in. Furthermore, ■■■ had sent the landlord a termination notice on 30 November 2018 informing her that he was terminating his tenancy at the end of December 2018 and he moved in the middle of that month.
17. The landlord contended that the tenancy had not ended on that date as there was no walkthrough with ■■■. But based on the testimony I heard at the hearing, that there was never a walkthrough seems to have been a result of miscommunication amongst the landlord's staff and because one of their staff members who had been dealing with ■■■ had recently passed away.
18. Although I accept the landlord's claim that there was no written or verbal rental agreement with the tenant, I find that there was nevertheless an implied agreement between them. Their implied agreement was that the tenant could reside at the rental unit in exchange for a rent payment of \$700.00 per month. The landlord accepted those rent payments for the first 3 months of 2019 and at no point did she regard the tenant as a trespasser or demand possession of the rented premises because they had not entered into a written agreement.
19. Accordingly, I find that the tenancy with ■■■ ended at the end of December 2018 and the landlord then entered into a new, albeit implied, rental agreement with the tenant on 01 January 2019. After that date, the tenant was responsible for the implied provisions and obligations of their agreement, including the obligation to pay rent.

20. Based on the landlord's evidence, I find that the tenant owes the landlord rent for the months of April, May and June 2019. However, as the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
21. I calculate that amount to be \$1975.25 (\$1400.00 for the period ending 31 May 2019 and \$575.25 for June 2019 (\$700.00 per month x 12 months = \$8400.00 per year ÷ 365 days = \$23.01 per day x 25 days = \$575.25)).

Decision

22. The landlord's claim for a payment of rent succeeds in the amount of \$1975.25.
23. The tenant shall pay a daily rate of rent in the amount of \$23.01, beginning 26 June 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

24. The landlord has assessed late fees in the amount of \$75.00.

Analysis

25. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

26. The minister has prescribed the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

27. As the tenant has been in arrears since 02 April 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

28. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

29. With her application, the landlord had submitted a copy of a termination notice (█#4) which she stated had been delivered to the rented premises, by courier, on 02 May 2019.
30. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 13 May 2019.
31. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

32. 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.

33. According to the testimony and evidence submitted at the hearing, on 02 May 2019 the tenant was in arrears in the amount of \$1400.00 and had been in

arrears since the beginning of April 2018. No payments have been made since the notice was issued and since that time, rent for June 2019 has also come due.

34. As the notice meets the timeframe requirements set out in section 19 of the *Act* it is a valid notice.

Decision

35. The landlord’s claim for an order for vacant possession of the rented premises succeeds.
36. 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.

Issues 4: Hearing Expenses

37. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application as well as receipts showing that she had been charged \$100.00 to hire a process server. As the landlord’s claim has been successful, the tenant shall pay the landlord’s hearing expenses.

Issue 5: Security Deposit

38. The landlord testified that ■ had paid a security deposit of \$525.00 on 16 January 2018 and receipt of that deposit is acknowledged in the submitted lease.
39. After ■ moved out, the tenant paid ■ \$525.00 and the landlord retained the original deposit as security for any liabilities in this new, implied rental agreement.
40. As the landlord’s claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

41. The landlord is entitled to the following:
 - A payment of \$1645.25, determined as follows
 - a) Rent Owing\$1975.25
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$120.00

d) LESS: Security Deposit..... (\$525.00)

e) Total Owing to Landlord\$1645.25

- A payment of a daily rate of rent in the amount of \$23.01, beginning 26 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.

04 July 2019

Date

Jo

Residential Tenancies Tribunal