

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0452-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:45 am** on **31 March 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED] hereafter referred to as the landlord, participated in the hearing and was represented by [REDACTED] (Affirmed) and [REDACTED] – Solicitor.
3. The respondent, [REDACTED] hereafter referred to as the tenant, did not participate in the hearing. (*Absent and not represented*).
4. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

5. The application was AMENDED at the hearing to add rent that has come due since the filing of the application. The new amount outstanding is **\$14,225.00**.
6. The tenant, [REDACTED] was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, 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.

The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **18 March 2020** by serving the original documents to the tenant personally at the rented premises.

The tenant has had **12 days** to provide a response.

A phone call was placed prior to the commencement of the hearing to the tenant as follows:

- a. [REDACTED] No answer, message left
- b. [REDACTED] No Answer, message left

7. 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 applicant, I proceeded in the tenant's absence.

Issues before the Tribunal

8. The landlord is seeking the following:
- a) Payment of rent owing **\$14,225.00**;
 - b) Payment of late fees
 - c) Vacant possession of the rented premises;
 - d) Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 19, 34 and 35 of *the Act*; and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owing - \$14,225.00

Relevant Submissions

Landlord Position

11. The landlord stated that he had entered into a monthly rental agreement with the tenant with rent is set at \$1050.00 per month and due on the 1st day of each month with a security deposit in the amount of \$525.00 collected on this tenancy on or about 27 June 2019. The landlord demonstrated the arrears with rental

records (**Exhibit L # 1**) as total rent outstanding is \$14,225.00 up to and including 31 March 2021. The landlord stated as of the hearing date 31 March 2021 the tenant remained in the unit and rent is outstanding.

Analysis

12. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
13. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began.
14. Records show administrative errors which I will address here. An amount is seen calculated as rent due for a month referred to as "Year 2020" which is an obvious oversight and error. Similarly, under the amounts paid, the security deposit is deducted as an amount paid for rent which has to be corrected.
15. In an effort to show figures without the errors, the tribunal has calculated the rental records in the table below:

Table # 1: Rent Calculations as Extracted from the Landlord Records

Date	Comment	Due	Payment	Balance
	SD Payment 27 June 19		\$ 525.00	
	Beginning of Tenancy	\$ -	\$ -	\$0.00
27-Jun-19	Rent Payment		\$ 1,050.00	\$1,050.00
1-Jul-19	Rent Due	\$ 1,050.00		\$0.00
1-Aug-19	Rent Due	\$ 1,050.00		(\$1,050.00)
18-Aug-19	Rent Payment		\$ 600.00	(\$450.00)
30-Aug-19	Rent Payment		\$ 450.00	\$0.00
1-Sep-19	Rent Due	\$ 1,050.00		(\$1,050.00)
18-Sep-19	Rent Payment		\$ 1,050.00	\$0.00
1-Oct-19	Rent Due	\$ 1,050.00		(\$1,050.00)
12-Oct-19	Rent Payment		\$ 1,050.00	\$0.00
23-Oct-19	Rent Payment		\$ 800.00	\$800.00
1-Nov-19	Rent Due	\$ 1,050.00		(\$250.00)
30-Nov-19	Rent Payment		\$ 250.00	\$0.00
1-Dec-19	Rent Due	\$ 1,050.00		(\$1,050.00)
1-Jan-20	Rent Due	\$ 1,050.00		(\$2,100.00)
1-Feb-20	Rent Due	\$ 1,050.00		(\$3,150.00)
1-Mar-20	Rent Due	\$ 1,050.00		(\$4,200.00)
1-Apr-20	Rent Due	\$ 1,050.00		(\$5,250.00)
21-Apr-20	Rent Payment		\$ 2,625.00	(\$2,625.00)
1-May-20	Rent Due	\$ 1,050.00		(\$3,675.00)
1-Jun-20	Rent Due	\$ 1,050.00		(\$4,725.00)
1-Jul-20	Rent Due	\$ 1,050.00		(\$5,775.00)
1-Aug-20	Rent Due	\$ 1,050.00		(\$6,825.00)
1-Sep-20	Rent Due	\$ 1,050.00		(\$7,875.00)
1-Oct-20	Rent Due	\$ 1,050.00		(\$8,925.00)
1-Nov-20	Rent Due	\$ 1,050.00		(\$9,975.00)
1-Dec-20	Rent Due	\$ 1,050.00		(\$11,025.00)
1-Jan-21	Rent Due	\$ 1,050.00		(\$12,075.00)
1-Feb-21	Rent Due	\$ 1,050.00		(\$13,125.00)
1-Mar-21	Rent Due	\$ 1,050.00		(\$14,175.00)

16. The records are clearer from Table # 1 above that rent for the period ending 31 March 2021 has not been paid leaving a balance of **\$14,175.00** outstanding.
17. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$34.52** beginning on **01 April 2021** and continuing until the day the landlord obtain vacant possession of the rented premises. That calculation is *(\$1050.00 X 12 months = \$12,600.00 ÷ 365 days = \$34.52 per day.)*

Decision

18. The landlord's total claim for rent succeeds as follows:
- a) Rent owing up to 31 March 2021 \$14,175.00
 - b) Total due to Landlord..... \$14,175.00**
 - c) A daily rate beginning 01 April 2021..... **\$34.52**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

19. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
20. The landlord testified that the tenant has been in arrears on an ongoing basis since December 2019. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

21. Established by undisputed fact above, the tenant was in arrears since December 2019. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
22. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

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

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

24. The landlord is seeking to recover possession of the rented premises located at [REDACTED].

25. The landlord testified that as the tenant was in arrears, he issued a termination notice under Section 19 of the Act (**Exhibit L # 2**) to terminate the tenancy on 01 December 2020. He testified that the notice was served via courier and as of the hearing date (31 March 2021), the tenant remained in the unit. The landlord testified that there are 3 adults living in the unit.

Analysis

26. Established by undisputed statement of fact above, the rental agreement is a written fixed term tenancy which has since converted to the month to month tenancy. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 19. (1)(b), (4) and 34 as well as the service requirements identified in Section 35.
27. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.
28. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenant a termination notice to vacate the property not less than 10 days after the notice is served on the tenant. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 19 November 2020 with a termination date of 01 December 2020. As established above and undisputed by the tenant, rent had been in arrears since December 2019. As rent had been in arrears for 30 plus days, I find this is well beyond the 5 day requirement set out in the Act. I further find that as the date of termination identified on the notice is 10 clear days between the date the notice was issued and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).
29. Sections 19. (4) and 34 below identify the technical requirements of the termination notice. On examination of the termination notice, I find it all these criteria have been met.

Section 19. (4)

In addition to the requirements under Section 34, a notice under this section shall

- (a) be signed by the landlord;*
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) be served in accordance with section 35.*

Section 34

A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*

30. As identified above, the landlord testified that the termination notice was served by way of courier which is a permitted method of service identified under Section 35.
31. According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession of the property along with an order for any and all costs associated with certifying an order at Residential Tenancies and costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

32. The landlord's claim for vacant possession succeeds. The landlord is further awarded cost associated with the certification of an order and the enforcement of the Possession Order by the High Sheriff of NL.

Issue 3: Hearing Expenses

Landlord Position

33. The landlord paid the following fees:

a. Application fee DGSNL (██████████) (Exhibit L # 3):	\$20.00
b. Process Server (Exhibit L # 4):	100.00
c. Legal Fees (Exhibit L # 5):	517.50
d. Courier Expense (Exhibit L #6):	<u>8.05</u>
e. Total Expenses	<u>\$645.55</u>

The landlord is seeking these costs.

Analysis

34. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord, with the exception of legal fees and the courier fees to serve the termination notice, are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.
35. Legal fees and expenses specific to serve a termination notice are specifically excluded and therefore cannot be awarded. As such, I find the tenant is responsible to cover the reasonable expenses in the amount of \$120.00.

Decision

36. The tenant shall pay the reasonable expenses of the landlord in the amount of \$120.00.

Summary of Decision

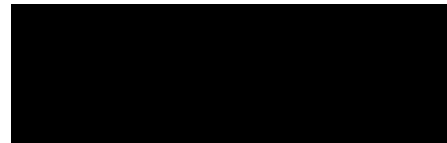
37. The landlord is entitled to the following:

- a) Rent Owing (Up to and including 31 March 2021)\$14,175.00
- b) Late Fees.....75.00
- c) Hearing Expenses \$120.00
- d) **Total Owing to the Landlord\$14,370.00**

- e) Vacant Possession of the Rented Premises
- f) A daily rate of rent set at **\$34.52** beginning **01 April 2021** and continuing until the day the landlord obtains vacant possession of the Rented Premises.
- g) Any costs incurred to certify an order at Residential Tenancies
- h) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

07 April 2021

Date



Michael Greene
Residential Tenancies Tribunal