

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0541-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:52 pm** on **27 January 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED] hereafter referred to as the landlord1, participated in the hearing. – **Affirmed.**
3. The applicant, [REDACTED] hereafter referred to as the landlord2, participated in the hearing. – **Affirmed.**
4. The applicant, [REDACTED] hereafter referred to as the landlord3, did not participate in the hearing but was represented by [REDACTED] – **Affirmed.**
5. The respondent, [REDACTED] hereafter referred to as the tenant, did not participate in the hearing – *Absent and Not Represented.*
6. The details of the claim were presented as a written monthly rental agreement which commenced on or about 01 July 2020 and rent due on the 1st of each month. There was no security deposit collected on this tenancy. The landlords issued a termination notice dated 01 August 2020 for the intended termination date of 31 October 2020 under Section 18 of the *Residential Tenancies Act, 2018*.
7. 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

8. 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 landlords show that the tenant was served with the notice of this hearing on the **14 January 2020** by serving the original documents to the tenant via Registered Mail [REDACTED] which shows as Canada Post delivered the documents on 15 January 2021.

The tenant failed to appear at the scheduled hearing and a phone call was placed to the tenant's number [REDACTED]. Contact was made and the tenant indicated that she would not be attending as she was at the hospital.

The tenant has had **11 days** to provide a response.

9. 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 applicants, I proceeded in the tenant's absence.
10. The landlords amended the application at the hearing to:
 - a. Increase the rent being claimed to **\$2059.00** as a result of rent that has come due and payments made since the filing of the application.
 - b. Increase the utilities being claimed to **\$752.52** as a result of charges incurred since the filing of the application.

Issues before the Tribunal

11. The landlords are seeking the following:
 - a) Payment of Rent
 - b) Payment of Utilities
 - c) Vacant possession of the rented premises
 - d) Hearing expenses

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. Also relevant and considered in this case are Sections 18, 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 Owning - \$2059.00

Relevant Submissions

Landlord Position

14. The landlords stated that they had entered into a written monthly rental agreement with the tenant which commenced on or about 01 July 2020. The agreed rent is set at \$950.00 plus \$250.00 in utilities per month and due on the 1st day of each month. There was no security deposit collected on this tenancy. The landlords demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is \$2059.00 up to and including 31 January 2021. The landlords stated as of the hearing date 27 January 2021 the tenant remained in the unit and rent is outstanding.

Analysis

15. I have reviewed the testimony and evidence of the landlords 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 landlords actually owed by the tenant.
16. With respect to the arrears being claimed, I agree with the landlords 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. Records are clear that rent for the period ending 31 December 2020 has not been paid leaving a balance of **\$1109.00**. Further, rent for January 1 – 27, 2021 can only be calculated up to and including the day of the hearing (27 January 2021). That calculation is ($\$950.00 \times 12 \text{ months} = \$11400.00 \div 365 \text{ days} = \$31.23 \text{ per day} \times 27 \text{ days} = \843.21). Rent for January 1 – 27, 2021 is **\$843.21**.
17. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$31.23** beginning on 28 January 2021 and continuing until the day the landlords obtain vacant possession of the rented premises.

Decision

18. The landlords' total claim for rent succeeds as follows:

- a) Rent owing up to 31 December 2020 \$1109.00
- b) Rent owing for January 1 – 27, 2021 843.21
- c) Total due to Landlords..... \$1952.21**
- d) A daily rate beginning 28 January 2021 **\$31.23**

Issue 2: Vacant Possession of the Rented Premises

Landlord Position

- 19. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
- 20. The landlords testified that they are looking to have their property returned as per the *Residential Tenancies Act, 2018*.
- 21. The landlords testified that a notice to terminate was issued under Section 18 of *the Act (Exhibit L # 2)* to terminate the tenancy on 31 October 2020. The landlords testified that the notice to terminate was personally served to the tenant at the rented premises 01 August 2020. The landlords indicated that as of the hearing date (27 January 2021), the tenant remained in the unit. The landlords further testified that to the best of their knowledge, there is 1 adult living in the unit.

Analysis

- 22. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 18 (9) and 34 as well as the service requirements identified in section 35.
- 23. Section 18 (2)(b) requires that when a premises is rented for month to month, the landlord may terminate the tenancy and the tenant is required to vacate the residential premises on a date not less than 3 months before the end of the rental period. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 01 August 2020 with a termination date of 31 October 2020. I find that as the date of termination identified on the notice is at least 3 months before the end of the rental period

and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 18 (2) (b). Sections 19 (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find it all these criteria have been met.

section 18 (9)

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

- (a) be signed by the landlord;*
- (b) be given not later than the first day of a rental period*
- (c) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (d) 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.*

24. According to the reasons identified above, I find that the termination notice issued by the landlords to be proper and valid. Therefore, the landlords are entitled to an order for vacant possession of the property along with an order for any and all costs associated with the certification of the order and direct costs from the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

25. The landlords' claim for vacant possession succeeds. The landlords are further awarded costs associated with the certification of the orders and enforcement of the Possession Order by the High Sheriff of NL.

Issue 3: Utilities Owing - \$752.52

Relevant Submissions

Landlord Position

26. The landlords stated that the rental agreement provided shows that the tenant is required to pay for 55% of the cost of the utilities to the building which is to be reimbursed to the landlords. The landlords testified that the tenant has failed to pay any utilities and has accumulated arrears in the amount of \$752.52 up to and including 28 December 2020 (**Exhibit L # 3**).

27. The landlords are seeking these arrears as expenses incurred.

Analysis

28. I have reviewed the testimony and evidence of the landlords in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the utilities that is being claimed by the landlords actually owed by the tenant.

29. With respect to the arrangement for the payment of the utilities, this is an accepted arrangement in many rental situations in the Province. The rental agreement (**Exhibit L # 7**) clearly outlines the condition of the compensation for utilities. I accept the evidence of the landlords that the tenant owes utilities in the amount of \$752.52.

Decision

30. The landlords' total claim for utilities succeeds in the amount of \$752.52.

Issue 4: Hearing Expenses

Landlord Position

31. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 4**). The landlords also paid \$13.44 to Canada Post (**Exhibit L # 6**) for Registered mail to serve the documents and \$5.04 for photocopying at Staples (**Exhibit L # 5**). The landlords are seeking these costs.

Analysis

32. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlords 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*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

33. The tenant shall pay the reasonable expenses of the landlords in the amount of \$38.48.

Summary of Decision

34. The landlords are entitled to the following:

- a) **Rent Owing.....\$1952.21**
- b) **Utilities Owing.....752.52**
- c) **Hearing Expenses.....\$38.48**

- d) **Total Owing Landlords\$2743.21**

- e) **Vacant Possession of the Rental Premises**

- f) **A Daily rate of rent commencing 28 January 2021 \$31.23/day**

- g) **An order for any and all costs associated with the certification of the orders and for the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.**

29 January 2021

Date



**Michael Greene
Residential Tenancies Tribunal**