

Residential Tenancies Tribunal

Application [REDACTED]

Amended Decision 21-0018-04

Jacqueline Williams
 Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 26-January-2022.
2. The applicant, Newfoundland and [REDACTED] represented by [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing. 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 submitted an affidavit (LL#01) with their application stating that she had served the tenant with notice of the hearing, on 30-November-2021, by email to an address provided to the landlord by the tenant. 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.
5. The landlord submitted a previous mediated agreement [REDACTED] (LL#02) signed through an application with this board. At that time the tenant owed \$5,299.00 in rent. The tenant displayed on their rent ledger (LL#03) that payments had been made towards that debt throughout the past year. This debt was completely payed off on 02-January-2022. See table below:

| Date | Action | Amount | total |
|-----------|-------------------------------|--------|-------|
| | Mediated agreement [REDACTED] | | 5299 |
| 22-Apr-21 | payment | -520 | 4779 |
| 25-May-21 | payment | -520 | 4259 |

| | | | |
|-----------|---------|------|------|
| 22-Jun-21 | payment | -520 | 3739 |
| 22-Jul-21 | payment | -520 | 3219 |
| 24-Aug-21 | payment | -520 | 2699 |
| 22-Sep-21 | payment | -520 | 2179 |
| 22-Oct-21 | payment | -520 | 1659 |
| 24-Nov-21 | payment | -520 | 1139 |
| 2-Dec-21 | payment | -619 | 520 |
| 2-Jan-21 | payment | -520 | 0 |

6. This present claim does not include or consider the monies settled through the mediated agreement.
7. The landlord amended their claim for rent from \$5,861.00 to \$5,193.00 to reflect the amount of rent currently owed.

Issues before the Tribunal

8. The landlord is seeking:
 - Rent \$5,193.00
 - Premises vacated
 - Hearing expenses reimbursed

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

11. The landlord submitted the rental agreement with the tenant (LL#04). She moved in on 20-October-2017. They entered a written monthly rental agreement from the 1st day of the month to the last. Rent is \$686.00 and is due on the 1st day of each month. There was no security deposit paid.
12. The landlord said that the tenant continued throughout the year to pay for rental arrears. She did not continue to make her regular payments. The landlord reports that it was made very clear to the tenant that mediated rent payments are not her regular rent and that she must also make her monthly rent payments. The landlord showed that the tenant did make some payments for her rent in the rent ledger (LL#03), please see table below:

Rent ledger

| Date | Action | Amount | total |
|-----------|-----------------------------------|---------|---------|
| 1-Apr-21 | rent due | 686.00 | 686.00 |
| 9-Apr-21 | rent payment | -686.00 | 0.00 |
| 1-May-21 | rent due | 686.00 | 686.00 |
| 30-May-21 | rent payment | -600.00 | 86.00 |
| 1-Jun-21 | rent due | 686.00 | 772.00 |
| 1-Jul-21 | rent due | 686.00 | 1458.00 |
| 1-Aug-21 | rent due | 686.00 | 2144.00 |
| 1-Sep-21 | rent due | 686.00 | 2830.00 |
| 1-Oct-21 | rent due | 686.00 | 3516.00 |
| 1-Nov-21 | rent due | 686.00 | 4202.00 |
| 1-Dec-21 | rent due | 686.00 | 4888.00 |
| 2-Dec-21 | rent payment | -381.00 | 4507.00 |
| 1-Jan-21 | rent to date of hearing Jan 01-26 | 586.30 | 5093.30 |

Daily rate: $\$686 \times 12 \text{ months} = \$8,232.00$
 $\$8,232.00$ divided by 365 days = $\$22.55$
 $\$22.55$ per day $\times 26$ days = $\$586.30$

13. The landlord is requesting full reimbursement of rent.

Analysis

14. Non-payment of rent is a violation of the rental agreement (LL#04). I accept the landlord's submitted rent ledger and testimony as evidence of rent arrears. The tenant owes the landlord \$5,093.30 in rent.

Decision

15. The landlord's claim for rent arrears succeeds in the amount of \$5,093.30.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

16. The landlord submitted the termination notice served to the tenant (LL#05). The notice is in a letter; the letter states that they are terminating the rental agreement in accordance with Section 19 of the *Residential Tenancies Act, 2018*. The letter identifies the rental unit, it is dated for 12-November-2021 with a termination date of 30-November-2021.
17. The landlord said that she sent it to the tenant by regular mail on 12-November-2021. She also served the tenant electronically to both her personal and work emails; both emails were provided to the landlord by the tenant for the purpose of communication.

18. The landlord is seeking an order of vacant possession.

Analysis

19. The termination notice is issued in accordance with Section 19 of the Residential Tenancies Act, 2018, as follows:

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,

.....

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.

.....

(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.

....

20. The tenant had been in rent arrears beginning 02-May-21, the landlord's notice included all the information required by the Act. Section 35 includes electronically serving a notice.

21. The notice is valid and the tenant should have vacated the unit on or before 30-November-2021.

Decision

22. The landlord's claim for an order for vacant possession of the rental premises succeeds.

23. The tenant should have vacated the property on or before 30-November-2021. The tenant is to vacate the property immediately.

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

Issue 3: Hearing expenses reimbursed \$20.00

25. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06)) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

26. The tenant shall:
- Pay the landlord rent \$5,093.30 and reimburse hearing expenses \$20.00 for a total of \$5.113.30.
 - Pay a daily rate of rent, \$22.55 a day, beginning 27-January-2022, until such time as the landlord regains possession of their property.
 - Vacate the premises immediately
 - Pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

The landlord will be granted an Order of Possession.

February 4, 2022

Date

