

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0115-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:15 pm** on **01 June 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] – Property Manager. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. (*Affirmed*).
4. The details of the claim were presented as a written monthly agreement with rent set at \$750.00 per month and due on the 1st of each month and a security deposit in the amount of \$560.00 was collected on or about 01 June 2017. The landlord issued a termination notice on 03 May 2021 for the intended termination date of 14 May 2021 under section 19 of the *Act*.
5. In a proceeding under the *Residential Tenancies Act*, 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

6. 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 **\$1650.00** up to and including 30 June 2021.

The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **07 May 2021** by serving the original documents to the tenant by email to the address: [REDACTED] and attaching a copy of the sent email and verification of the email address as required.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Payment of rent owing **\$1650.00**;
 - b) Payment of late fees
 - c) Vacant possession of the rented premises;
 - d) Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. 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 - \$1650.00

Relevant Submissions

Landlord Position

10. The landlord representative testified that they had taken over this rental account recently and the tenant was an already established tenant. The landlord stated that they had entered into a monthly rental agreement with the tenant with rent is set at \$750.00 per month and due on the 1st day of each month with a security deposit in the amount of \$560.00 collected on this tenancy on or about 01 June 2017.
11. The landlord demonstrated the arrears with rental records (**Exhibit L # 6**) as total rent outstanding is \$1650.00 up to and including 30 June 2021. The landlord stated as of the hearing date 01 June 2021 the tenant remained in the unit and rent is outstanding.
12. The landlord representative testified that they were notified of an agreement between the home owner and the tenant/previous property manager regarding back arrears. The details of this arrangement was \$250.00 per month until caught up leading to the payments as follows:

- a. January 2021 - \$1000.00
 - b. February 2021 - \$1000.00
 - c. March 2021 - \$1000.00
 - d. April 2021 - \$900.00
13. The landlord representative indicated that as of May 2021 the tenant would revert back to the regular monthly rent of \$750.00. There was no signed agreement submitted as evidence.

Tenant Position

14. The tenant acknowledged owing the arrears as claimed by the landlord. The tenant stated that he did not agree to a specific payment plan of the arrears. The tenant testified that the agreement details indicated above was not the arrangement as he understood it.
15. The tenant outlined the arrangement as that he could pay back the arrears "as he was able to". There was also no copy of an agreement submitted as evidence.

Analysis

16. I have reviewed the testimony and evidence of the landlord and tenant 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.
17. With respect to the arrears being claimed, I agree with the landlord that rent is owed. The existence of any sort of repayment agreement is certainly not factual but that does not negate the fact that arrears have been accrued and are owing.
18. I will further add that I do not accept the tenant's version of the agreement that a landlord/home owner would allow a tenant to pay back arrears "as he was able to". This makes no financial sense. For the purpose of this decision I will address the arrears as a lump sum.
19. 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 May 2021 have not been paid leaving a balance of **\$900.00**. Further, rent for June 2021 can only be calculated up to and including the day of the hearing (01 June 2021). That calculation is ($\$750.00 \times 12 \text{ months} = \$9000.00 \div 365 \text{ days} = \$24.66 \text{ per day} \times 1 \text{ days} = \24.66). Rent for June 1, 2021 is **\$24.66**.
20. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$24.66** beginning on **02 June 2021** and continuing until the day the landlord obtain vacant possession of the rented premises.

Decision

21. The landlord's total claim for rent succeeds as follows:

- a) Rent owing up to 31 May 2021 \$900.00
- b) Rent owing for 01 June 2021 24.66

- c) Total due to Landlord..... \$924.66**

- d) A daily rate beginning 02 June 2021 **\$24.66**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

- 22. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.

- 23. The landlord testified that the tenant has been in arrears on an ongoing basis since they became involved in January 2021. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

- 24. Established by undisputed fact above, the tenant was in arrears since January 2021. 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.

- 25. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

- 26. 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

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

28. The landlord representative testified that when the tenant fell in arrears, they issued a termination notice under Section 19 of the Act (**Exhibit L # 7**) to terminate the tenancy on 14 May 2021. She testified that the notice was served by email and as of the hearing date (01 June 2021), the tenant remained in the unit. The landlord representative testified that there is 1 adult living in the unit.

Analysis

29. 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.
30. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.
31. 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 # 7**), I find the notice was served on 03 May 2021 with a termination date of 14 May 2021. As established above and undisputed by the tenant, rent had been in arrears since January 2021. 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).
32. 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.*

33. As identified above, the landlord testified that the termination notice was served via email which is a permitted method of service identified under Section 35.
34. 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

35. 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

36. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 9**). The landlord is seeking this cost.

Analysis

37. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord 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

38. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

39. The landlord is entitled to the following:

- a) Rent Owing (Up to and including 01 June 2021).....\$924.66
- b) Late Fees.....75.00
- c) Hearing Expenses \$20.00
- d) **Total Owing to the Landlord****\$1019.66**

- e) Vacant Possession of the Rented Premises
- f) A daily rate of rent set at **\$24.66** beginning **02 June 2021** and continuing until the day the landlord obtains vacant possession of the Rented Premises.
- g) Any incurred costs associated with certification of the attached Orders
- h) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

16 June 2021

Date

