

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0133-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:45 pm** on **07 April 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. (*Affirmed*).
3. The respondent, [REDACTED] hereafter referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
4. The respondent, [REDACTED] hereafter referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
5. The details of the tenancy are a verbal monthly tenancy commencing 01 October 2020 with rent was set at \$1500.00 with utilities included and a security deposit in the amount of \$750.00 collected on this tenancy on 08 Sept 2020.
6. 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

7. The landlord amended the claim to add rent that has come due since the filing of the application and to reflect payments made by the tenant against the account. The new amount being claimed is \$1500.00 for the period ending 30 April 2021.

8. The tenant, [REDACTED] were 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 tenants were served with the notice of this hearing on the **26 March 2020** by serving the original documents to the tenants by email: [REDACTED] and attaching the sent emails and verification of the use of the email between the parties.

A phone call was placed to the tenants at the following numbers:

[REDACTED] No answer and message left
[REDACTED] No answer and message left

The tenants have had **11 days** to provide a response.

9. As the tenants were 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 tenants' absence.

Issues before the Tribunal

10. The landlord is seeking the following:
- a) Payment of rent owing **\$1500.00**;
 - b) Payment of late fees **\$164.00**
 - c) Utilities Owing **\$98.77**
 - d) Vacant possession of the rented premises;
 - e) Hearing expenses.

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. 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 - \$1500.00

Relevant Submissions

Landlord Position

13. The landlord stated that she had entered into a monthly rental agreement with the tenants with rent is set at \$1500.00 per month and due on the 1st day of each month with a security deposit in the amount of \$750.00 collected on this tenancy on or about 08 September 2020. The landlord demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is \$1500.00 up to and including 30 April 2021. The landlord stated as of the hearing date 07 April 2021 the tenant remained in the unit and rent is outstanding.
14. The landlord testified that the tenant did make a payment of 31 March 2021 in the amount of \$1500.00 which has been included in the claim of rent outstanding above.

Analysis

15. 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.
16. It is noted that the landlord has acknowledged the payment of \$1500.00 by the tenants on 31 March 2021. Further, rent for April 2021 has been added to the file as it has come due since the filing of the claim.
17. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenants 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 30 April 2021 has not been paid leaving a balance outstanding.
18. Rent for April 2021 can only be calculated up to and including the day of the hearing (07 April 2021). That calculation is $(\$1500.00 \times 12 \text{ months} = \$18000.00 \div 365 \text{ days} = \$49.32 \text{ per day} \times 7 \text{ days} = \$345.24)$. Rent for April 1 – 7, 2021 is **\$345.24**.
19. Additionally, the tenants are responsible for rent on a daily basis in the amount of **\$49.32** beginning on **08 April 2021** and continuing until the day the landlord obtain vacant possession of the rented premises.

Decision

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

- a) Rent owing (up to and including 07 April 2021) \$345.24
- b) Total due to Landlord..... \$345.24**
- c) A daily rate beginning 08 April 2021..... **\$49.32**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

- 21. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
- 22. The landlord testified that the tenants have been in arrears on an ongoing basis since December 2020. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

- 23. Established by undisputed fact above, the tenants were in arrears since December 2020. 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.
- 24. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlord.

Decision

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

Issue 3: Payment of Utilities - \$98.77

Landlord Position

- 26. The landlord is seeking payment of utilities (movie and pay per view rentals) as required under the rental agreement.
- 27. The landlord testified that the tenants rent include cable services but they are required to pay for any on demand movie or pay per view rentals on the account.

The landlord provided a summary of the charges (**Exhibit L # 2**) showing a balance outstanding in the amount of \$98.77.

Analysis

28. I have reviewed the testimony and evidence on this matter submitted by the landlord. I accept the evidence of the landlord and find that the tenants have failed to reimburse the landlord for on demand and pay per view services they availed of during the tenancy. As such, I find the tenants responsible for the utilities in the amount of **\$98.77**.

Decision

29. The landlord's claim for utilities succeeds in the amount of \$98.77.

Issue 4: Vacant Possession of the Rented Premises

Landlord Position

30. The landlord is seeking to recover possession of the rented premises located at [REDACTED]
31. The landlord testified that when the tenants fell in arrears, she issued a termination notice under Section 19 of the Act (**Exhibit L # 3**) to terminate the tenancy on 30 March 2021. The landlord testified that the tenants did not pay the rental payment until 31 March 2021 and still has not paid any accumulated late fees as prescribed for under regulations. She testified that as of the hearing date (07 April 2021), the tenants remained in the unit. The landlord testified that there are 2 adults and 1 child aged 4 years old living in the unit.

Analysis

32. Established by undisputed statement of fact above, the rental agreement is a monthly 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.
33. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlord.
34. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenants a termination notice to vacate the property not less than 10 days after the notice is served on the tenants. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 18 March 2021 with a termination date of 30 March 2021. As established above and undisputed by the tenants, rent had been in arrears

since December 2020. It is clear that the rent and associated late fees were not paid in full before the termination date. 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 tenants are required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).

35. 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.*

36. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
37. 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 certification of the orders and the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

38. 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

39. 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 # 4**). The landlord is seeking this cost.

Analysis

40. 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 tenants are responsible to cover these reasonable expenses.

Decision

41. The tenants shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

42. The landlord is entitled to the following:

- a) Rent Owing (Up to and including 07 April 2021)\$345.24
- b) Late Fees.....75.00
- c) Payment of Utilities98.77
- d) Hearing Expenses20.00
- d) Total Owing to the Landlord\$539.01**

- e) Vacant Possession of the Rented Premises
- f) A daily rate of rent set at **\$49.32** beginning **08 April 2021** and continuing until the day the landlord obtains vacant possession of the Rented Premises.
- g) Any incurred costs to certify the attached orders.
- h) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

09 April 2021

Date

