

## Residential Tenancies Tribunal

Decision 19-0026-04

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:32 PM on 09 December 2019 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 landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant1 did not participate in the hearing. Tenant1 was represented by [REDACTED] as indicated at the hearing.
4. The respondent, [REDACTED], hereafter referred to as the tenant2 did participate in the hearing.
5. The details of the claim were presented as a written fixed term rental agreement with rent set at \$1300.00 per month and due on the 1<sup>st</sup> of each month. It was stated that a security deposit in the amount of \$500.00 was collected on or about 01 March 2018 and the landlord issued the following termination notices:
  - a. 02 October 2018 for a termination date of 13 October 2018 (section 18 of RTA, R-2000) **Exhibit L # 5 – Rent Paid in full 11 October 2018**
  - b. 17 December 2018 for a termination date of 28 December 2018 (section 18 of RTA, R-2000) **Exhibit L # 4 – Rent Paid in full 23 December 2018**
  - c. 15 May 2019 for a termination date of 25 May 2019 (section 19 of RTA, 2018) **Exhibit L # 3 – Rent Paid in full 17 May 2019**
  - d. 06 July 2019 for a termination date of 17 July 2019 (section 19 of RTA, R-2018) **Exhibit L # 2 – Rent Paid in full 19 July 2019**

- e. 08 November 2019 for a termination date of 21 November 2019 (section 19 of RTA, R-2018) **Exhibit L # 1 – Rent Paid in Full 11 November 2019**
6. 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**

7. The tenant, [REDACTED], authorized at the hearing for her partner, [REDACTED] to act on her behalf during the hearing.
8. The landlord amended the claim at the hearing to add rent that has come due for December 2019 since the filing of the application as well as tenants payments (inclusive of \$75.00 in late fees) as follows:
  - a. 09 November 2019 (\$850.00)
  - b. 11 November 2019 (\$525.00)

### **Issues before the Tribunal**

9. The landlord is seeking the following:
  - a) Vacant possession of the rented premises
  - b) Payment of rent owing **\$1300.00**
  - c) Payment of late fees **\$75.00**
  - d) Hearing expenses

### **Legislation and Policy**

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. 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 Owning - \$1300.00

### Relevant Submissions

#### Landlord Position

12. The landlord stated that she had entered into a written fixed term rental agreement with the tenants, commencing 01 July 2019. The agreed rent was set at \$1300.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$500.00 collected on this tenancy (01 March 2018). The landlord issued four (4) termination notices during the previous 12 months beginning the date of this hearing (09 December 2019) (**Exhibits L # 1-4**). The landlord stated that rent was outstanding in the amount of \$1300.00 (**Exhibit L # 6 & 7**) for the period ending 31 December 2019 and stated as of the hearing date 09 December 2019 rent remains outstanding.

#### Tenant Position

13. Tenant2 stated that they owe rent for the month of December 2019 and that they did receive termination notices from the landlord as described in Paragraph 5 above. Tenant2 states that they are moving out on or about 28 December 2019 in any regard.

### Analysis

14. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there are two issues here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenants, (ii) are the notices issued to the tenants valid.
15. With respect to the arrears being claimed, I agree with the landlord that rent is owed for the month of December 2019. 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 and tenant acknowledgement of arrears are clear that rent for the period of November 1 – 30, 2019 is owed in the amount of **\$1300.00**. Rent for the month of December can only be awarded up to and including the hearing date (09 December 2019) and is calculated as ( $\$1300.00 \times 12 \text{ months} = \$15,600.00 \div 365 \text{ days} = \$42.74 \text{ per day} \times 9 \text{ days} = \$384.66$ ). Rent for December 1 – 9, 2019 then is **\$384.66**.
16. The landlord stated that two payments were made in the month of November 2019 (November 9 - \$ 850.00, November 11 - \$525.00).
- 17.
18. The calculated daily rate of rent is **\$42.74** commencing on 10 December 2019.

## Decision

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

- a) Rent owing up to 30 November 2019 ..... \$1300.00
- b) Rent owing for December 1 – 9, 2019..... 384.66
- c) Sub-total..... \$1684.66
  
- d) LESS: Tenant Payment 09 November 2019 ..... (\$850.00)
- e) LESS: Tenant Payment 11 November 2019 ..... (\$525.00)
  
- f) Total Arrears ..... **\$309.66**

## Issue 2: Payment of Late Fees - \$75.00

### Landlord Position

- 20. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
  
- 21. The landlord testified that the tenants were in arrears for the month of November 2019 and paid the rent in full including the assessed \$75.00 late fee on 11 November 2019. The landlord indicated that she is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

### Tenant Position

- 22. Tenant2 testified that he was fully aware of what the landlord was asking to have ordered.

## Analysis

- 23. Established by undisputed fact above, the tenants were in arrears for the period 01 November 2019 to 11 November 2019. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
  
- 24. The calculated late fee for the period Nov 1 – 11, 19 is as follows:
  - a. 1<sup>st</sup> Day Late (02 November 2019) - \$5.00
  - b. 2<sup>nd</sup> & subsequent days (3<sup>rd</sup> to 11<sup>th</sup>) 9 @ \$2.00 = \$18.00
  - c. Total Late Fees - **\$23.00**

25. The calculated late fee for the period December 1 – 09, 19 is as follows:
- a. 1<sup>st</sup> Day Late (02 December 2019) - \$5.00
  - b. 2<sup>nd</sup> & subsequent days (3<sup>rd</sup> to 9<sup>th</sup>) 7 @ \$2.00 = \$14.00
  - c. Total Late Fees - **\$19.00**
26. The issue of rental arrears has been determined above confirming that the tenant owed rent to the landlord for the period 01 November 2019 to 11 November 2019 and paid this rent in full including an assessed late fee of \$75.00 on or about 11 November 2019. The landlord's assessed late fee differs for the calculated late fee in paragraph 27 above. The assessed late fee of the landlord has been deducted from arrears owing For December above in paragraph 22 and the correct late fee for November 2019 (**\$23.00**) will be applied here.
27. Similarly it has been determined that the tenants have not paid rent for December 2019 as of the hearing date (09 December 2019) and a late fee is applicable and awarded as per paragraph 28 in the amount of **\$19.00**

### **Decision**

28. The landlord's claim for late fees succeeds in the amount of **\$42.00** (\$23.00 + \$19.00) as per the regulations established under the *Residential Tenancies Act, 2018*.

### **Issue 3: Hearing Expenses**

#### Landlord Position

29. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████████) (**Exhibit L # 10**). The landlord is seeking this cost.

### **Analysis**

30. 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**

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

## Issue 4: Vacant Possession of the Rented Premises

### Landlord Position

32. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
33. The landlord testified that the tenants have failed to pay rent as required by the rental agreement and accumulated rental arrears for the month of December 2019. The landlord testified that the latest termination Notice issued by the landlord was on 08 November 2019 for the termination date of 21 November 2019 (**Exhibit L # 1**).
34. The landlord submitted 5 termination Notices into evidence that has been issued to the tenants for the period 02 October 2018 to 08 November 2019 (**Exhibits L # 1 – 5**). The landlord is seeking vacant possession as the tenants have been issued three or more notices for non-payment of rent in a 12 month period as per section 19(3) of the *Act*.
35. The landlord indicated that as of the hearing date (09 December 2019), the tenants and 4 children aged approximately 13, 10, 4 and 2 years remained in the unit.

### **Analysis**

36. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19(4) and 34 as well as the service requirements identified in section 35.
37. With regard to the validity of the termination notices issues, it must be determined if each of the notices are proper and valid. Each of the notices were issues for cause of non-payment of rent. The current *Act* refers to section 19 for non-payment of rent and reads as follows:

***19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),***

***(b) where the residential premises is***

***(i) rented from month to month,***

***(ii) rented for a fixed term, or***

***(iii) a site for a mobile home, and***

***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.**

**(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.**

**(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.**

**(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.**

38. The landlord issued the following Termination Notices from the period of 02 October 2018 to 08 November 2019. The determination of the validity of each is described under each notice.
- a. Issued 02 October 2018 for a termination date of 13 October 2018 (section 18 of RTA, R-2000) **Exhibit L # 5 – Rent Paid in full 11 October 2018**
    - i. **Beyond the 12 month time requirement allowed for under section 19(3) of the Residential Tenancies Act, R-2018**
  - b. Issued 17 December 2018 for a termination date of 28 December 2018 (section 18 of RTA, R-2000) **Exhibit L # 4 – Rent Paid in full 23 December 2018**
    - i. **The termination notice is determined to be technically valid and as per section 18(2) of the Residential Tenancies Act, 2000, the notice is determined Notice Null and Void when rent was paid in full on 23 December 2018.**
  - c. Issued 5 May 2019 for a termination date of 25 May 2019 (section 19 of RTA, 2018) **Exhibit L # 3 – Rent Paid in full 17 May 2019**
    - i. **The termination notice requires that rent be overdue for 5 days or more and then the landlord may issue a termination notice of not less than 10 days after the notice is served as per section 19(1)(b) of the Residential Tenancies Act, 2018. The landlord issued this notice when the tenant was not overdue for 5 days or more and in doing so this notice is determined to not be a valid termination notice.**

d. Issued 06 July 2019 for a termination date of 17 July 2019 (section 19 of RTA, R-2018) **Exhibit L # 2 – Rent Paid in full 19 July 2019**

*i. This termination notice has been previously determined to be not valid under Order [REDACTED].*

e. Issued 08 November 2019 for a termination date of 21 November 2019 (section 19 of RTA, R-2018) **Exhibit L # 1 – Rent Paid in Full 11 November 2019**

*i. The termination notice is determined to be technically valid and as per section 19(2) of the Residential Tenancies Act, 2018, the notice is determined Notice Null and Void when rent was paid in full on 11 November 2019.*

39. The landlord is basing the request for a vacant possession on the notion that more than two (2) valid notices for non-payment of rent were issued in a 12 month period. As determined in paragraph 38 (b) and 38 (e) above, for the previous 12 months from the date of application, the landlord has issued two (2) valid termination notices that were deemed Null and Void as a result of the tenant paying rent and associated fees prior to the date of termination.
40. The current arrears as indicated by the landlord is for the arrears of December 2019 and no termination notice has been issued for these arrears. The last notice issued was on 08 November for the intended termination date of 21 November 2019 which was rendered Null and Void once the arrears payment was made on or about 11 November 2019.
41. On examination of the termination notices issued and considering the legislation under section 19(3), I find that the landlord has not issued more than 2 valid termination notices to the tenant with respect to non-payment of rent. Additionally, I find that there is no current termination notice in effect considering the acknowledged arrears for December 2019. As such, I find that there are no grounds to issue an order for the tenant to vacate the residential premises under the *Residential Tenancies Act, 2018*.

## **Decision**

42. The landlord's claim for vacant possession fails.



**Summary of Decision**

43. The landlord is entitled to the following:

- a) Rent Owing (up to and including 09 December) .....\$309.66
- b) Late Fees.....42.00
- c) Hearing Expenses ..... \$20.00
- d) **Total owing to Landlord** .....**\$371.66**

31 December 2019

**Date**



**Michael Greene**  
**Residential Tenancies Tribunal**