

Residential Tenancies Tribunal

Decision 19-0119-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:50 pm on 21 January 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord was represented by [REDACTED], Regional Manager.
3. The respondent, [REDACTED], hereafter referred to as tenant1 did not participate in the hearing.
4. The respondent, [REDACTED], hereafter referred to as tenant2 did not participate in the hearing.
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$245.00 per month and due on the 1st of each month. There was no security deposit collected on this tenancy. The landlord issued a termination notice dated 02 December 2019 for the intended termination date of 14 December 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
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 landlord amended the application at the onset of the hearing to include rent that has come due since the application was filed for January 2020 and payments made by the tenants. The new rental amount owing is \$675.00 up to and including 31 January 2020.
8. There was a previous hearing and subsequent order issued ([REDACTED]). The order was certified on 15 October 2019 for collection.
9. The tenants, [REDACTED] & [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 **04 Dec 2019** by serving the application for dispute resolution document to the tenants via email: [REDACTED] and providing verification that the email was sent. The tenants have had **47 days** to provide a response.

There was no contact information on file for the tenants and therefore no contact was attempted.

As the tenants were properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

Issues before the Tribunal

10. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$675.00**
 - c) Payment of late fees **\$75.00**
 - d) 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 Owning - \$675.00

Relevant Submissions

Landlord Position

13. The landlord stated that he had entered into a written rental agreement with the tenants, commencing 01 June 2011. The agreed rent is set at \$245.00 per month and due on the 1st day of each month with no security deposit collected on this tenancy. The landlord issued a termination notice (**Exhibit L # 2**) on 02 December 2019 for the intended date of 14 December 2019 (section 19). The landlord stated that rent was outstanding in the amount of \$675.00 (**Exhibit L # 1**) for the period ending 31 January 2020 and stated as of the hearing date 21 January 2020 rent remains outstanding.
14. The landlord added that this tenancy is in relation to a mobile home.
15. There was an order () issued for the following and this order has been certified for collection:
 - a. Rent owing up to 31 August 2019 - \$470.00
 - b. Late Fees - \$75.00
 - c. Hearing Expenses - \$20.00
 - d. Total - \$565.00

Analysis

16. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenants.
17. With respect to the arrears being claimed, I can only deal with rent due and payments from 01 September 2019 onward as there is already a certified order in place which the landlord can collect on with the appropriate filing at Small Claims Court.
18. The following is the ledger of the account (01 September 19 – Hearing Date):

Date	Comment	Due	Payment	Balance
	Bal. Forward	\$ -	\$ -	\$0.00
1-Sep-19	Rent Due	\$ 245.00		(\$245.00)
23-Sep-19	Rent Payment		\$ 150.00	(\$95.00)
1-Oct-19	Rent Due	\$ 245.00		(\$340.00)
29-Oct-19	Rent Payment		\$ 410.00	\$70.00
1-Nov-19	Rent Due	\$ 245.00		(\$175.00)
1-Dec-19	Rent Due	\$ 245.00		(\$420.00)
13-Dec-19	Rent Payment		\$ 460.00	\$40.00
1-Jan-20	Rent Due	\$ 245.00		(\$205.00)

19. Records are clear that rent for the period ending 31 December 2019 shows a credit balance in the amount of **\$40.00**.
20. Rent for the Month of January can only be awarded up to and including the hearing date (21 January 2020) and is calculated as $(\$245.00 \times 12 \text{ months} = \$2940.00 \div 366 \text{ days} = \$8.03 \text{ per day} \times 21 \text{ days} = \$168.63)$. The calculated rent due for January 1 – 21, 2020 then is **\$168.63**.
21. I find that the tenants have rent outstanding as of the hearing date (21 January 2020) as follows:
- a. Rent credit (up to 31 December 2019) – (\$40.00)
 - b. Rent Owing (January 1 – 21, 2020) - \$168.63
 - c. **Total rent outstanding by tenants - \$128.63**
22. The landlord is further awarded a daily rate of rent in the amount of **\$8.03** commencing on 22 January 2020 and continuing until the day the landlord obtains vacant possession of the property.

Decision

23. The landlord's total claim for rent succeeds as follows:
- a) Rent owing up to 21 January 2020..... \$128.63
 - b) The landlord is awarded a daily rate of rent in the amount of \$8.03 beginning on 22 January 2020 and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

24. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
25. The landlord testified that the tenants have been in arrears since March 2018. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

26. Established by undisputed fact above, the tenants were in arrears for the period ending 21 January 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.
27. The tenants have been awarded late fees previously under claim [REDACTED] and the arrears have been continuous from March 2018.
28. Although the tenants have been in arrears since March 2018, there has been a previous award for the late fees covering the same rental period under claim [REDACTED]. As such no further award can be issued.

Decision

29. The landlord's claim for late fees fails as an award has been previously issued covering the same rental period.

Issue 3: Hearing Expenses

Landlord Position

30. 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 # 3**). The landlord is seeking this cost.

Analysis

31. 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

32. 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

33. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
34. The landlord testified that the tenants have failed to pay rent as required by the rental agreement and has accumulated excessive rental arrears. The landlord submitted a copy of the termination notice (**Exhibit L # 2**) issued to the tenants on 02 December 2019 for the intended termination date of 14 December 2019 thereby terminating the tenancy effective 14 December 2019. On the termination date the tenants were in arrears.
35. The landlord testified that the notice to terminate was served to the tenant on 02 December 2019 by personal service. The landlord indicated that as of the hearing date (21 January 2020), the tenants remain 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. The issue of rental arrears has been established above. There is no doubt that the tenants owe rent to the landlord and have failed to pay all the arrears by the ending date of the termination notice (14 December 2019).
38. The landlord issued a termination notice under section 19 of the *Residential Tenancies Act* by personal service. Section 19 requires that the landlord provide notice to the tenants that the rental agreement is terminated and the tenants are required to vacate the property on a specified date not less than 10 days after the notice has been served. I accept the evidence of the landlord and find that the tenants failed to make the required rent payments thereby accumulating rental arrears as calculated above.

39. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 02 December 2019 with a termination date of 14 December 2019. As established above, the tenants have outstanding rent beyond the date of termination. I further find that as the date of termination identified on the notice is not less than 10 days after the notice has been served and the date the tenants are required to move out, the termination notice is in full compliance with the requirements of section 19(4). 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 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.*

40. As identified above, the landlord testified that he served the termination notice by personal service which is a permitted method of service identified under section 35.
41. 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 the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

42. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

43. The landlord is entitled to the following:

- a) Rent\$128.63
- b) Hearing Expenses \$20.00
- c) **Total owing to Landlord****\$148.63**

- d) Vacant Possession of the Rented Premises.
- e) A daily rate of rent in the amount of \$8.03 beginning 22 January 2020.
- f) An order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

3 February 2020

Date



Michael Greene
Residential Tenancies Tribunal