

Residential Tenancies Tribunal

Decision 19-0123-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 07 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 tenant, participated in the hearing. (*Sworn*)
3. The respondent, [REDACTED], hereafter referred to as landlord1, did not participate in the hearing. (*Absent and Not Represented*)
4. The respondent, [REDACTED], hereafter referred to as landlord2, participated in the hearing. (*Affirmed*)
5. The details of the claim were presented as a written fixed term rental agreement and set to expire on 06 November 2020 with rent set at \$700.00 per month and due on the 1st of each month. There was no security deposit collected on the tenancy. The landlords issued two termination notices (1) dated 09 December 2019 for the intended termination date of 19 December 2019 and (2) dated 19 December 2019 for the intended termination date of 30 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. Landlord1 did not attend the hearing as he was not feeling well and was not represented. He was in the parking lot in his car.
8. Landlord2 amended the claim at the onset to increase the amount of rent being claimed to \$1925.00 reflecting rent that has come due since the filing of the claim.

Issues before the Tribunal

9. The tenant is seeking the following:
 - a) Determination of the Validity of a Notice
10. The landlords are seeking the following:
 - b) Vacant possession of the rented premises
 - c) Payment of rent owing **\$1925.00**
 - d) Late Fees **\$75.00**
 - 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 - \$1925.00

Relevant Submissions

Landlord Position

13. Landlord2 stated that the parties entered into a written fixed term rental agreement with the tenant, commencing 06 November 2019. The agreed rent was set at \$700.00 per month and due on the 1st day of each month with no

security deposit collected on the tenancy. The landlord issued a termination notice (**Exhibit T # 1**) on 09 December 2019 for the intended date of 19 December 2019. The landlord issued a second termination notice (**Exhibit L # 3**) on 19 December 2019 for the intended date of 30 December 2019. Landlord2 further submitted into evidence a copy of the rental ledger (**Exhibit L # 1**) and the rental agreement (**Exhibit L # 2**). Landlord2 testified that rent was outstanding and the tenant remained in the unit. Landlord2 stated as of the hearing date 07 January 2020 rent remains outstanding.

Tenant Position

The tenant acknowledged the arrears as claimed by the landlords stating that he fell on hard times and couldn't afford to make the rent payments.

Analysis

- 14. I have reviewed the testimony and evidence of the landlords and tenant 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 landlords actually owed by the tenant.
- 15. With respect to the arrears being claimed, I agree with landlord2 that rent is owed. 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 is owing up to and including 31 December 2019 in the amount of \$1225.00. Rent for January 2020 can only be awarded up to and including the hearing date (07 January 2020) and on a daily rate of rent beyond the hearing date calculated as ($\$700.00 \times 12 \text{ months} = \$8400.00 \div 366 \text{ days} = \$22.95 \text{ per day} \times 7 \text{ days} = \160.65). Rent for January 1 - 7, 2020 then is **\$160.65**.
- 16. Respective of the rent for the remainder of the month of January 2020, the landlords are further awarded a daily rate of rent in the amount of \$22.95 commencing on 08 January 2020 and continuing until the day the landlords obtain vacant possession of the property.

Decision

- 17. The landlords' total claim for rent succeeds as follows:
 - a) Rent owing up to 31 December 2019 \$1225.00
 - b) Rent owing for January 1 – 7, 2020 160.65
 - c) Total Arrears **\$1385.65**

- d) The landlords are awarded a daily rate of rent in the amount of \$22.95 beginning on 08 January 2020 and continuing until the day the landlords obtain vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

18. The landlords are seeking payment of late fees as a result of the tenant's failure to pay rent on time.
19. Landlord2 testified that the tenant has been in arrears since the onset of the tenancy and has not made any rent payments. Landlord2 indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Tenant Position

20. The tenant acknowledged he was aware of what was being sought by the landlord.

Analysis

21. Established by undisputed fact above, the tenant is in arrears since the onset of the tenancy. 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. Any calculated amount of late fee would exceed the maximum allowable.
22. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlords.

Decision

23. The landlords' claim for late fees succeeds in the amount of the maximum allowable of \$75.00.

Issue 3: Hearing Expenses

Landlord Position

24. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████████) (**Exhibit L # 4**). The landlords are seeking these costs.
25. The tenant did not claim any hearing expenses.

Analysis

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

27. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

Issue 4: Vacant Possession of the Rented Premises/Validity of Notice

Landlord Position

28. The landlords are seeking to recover possession of the rented premises located at ██████████.
29. Landlord2 testified that she issued the first termination notice (**Exhibit T # 1**) on 09 December 2019 and realized that it was not done properly then issued a second notice to the tenant under section 19 (**Exhibit L # 3**) on 19 December 2019.
30. Landlord2 testified that the tenant is in rental arrears and indicated that the second notice to terminate was issued under Section 19 of *the Act* (**Exhibit L # 3**) on 19 December 2019 to terminate the tenancy on 30 December 2019. Landlord2 testified that the notice to terminate was served by the landlord by placing a copy in the mailbox located on the rented premises on 19 December 2019. Landlord2 indicated that as of the hearing date (07 January 2020), the tenant remains in the unit. Landlord2 further testified that to the best of her knowledge, there is 1 adult living in the unit.

Tenant Position

31. The tenant testified that he felt that it didn't really matter any longer concerning the notice he was contesting as the landlord re-issued a new notice.
32. The tenant was fully aware of and understand the consequences of what the landlords were asking when an order of possession in being sought. This was reiterated and explained to the tenant. The tenant confirmed that there was only one adult living in the unit.

Analysis

33. 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.
34. The issue of non-payment of rent has been outlined and established by the testimony of landlord2 along with documentary evidence presented by the landlords. I accept the evidence of the landlords and find that the tenant does owe rent as described in this decision above.
35. Section 19 (1)(b) requires that when a premises is rented for month to month and the tenant's rent is overdue for 5 days or more, the landlords may terminate the tenancy and the tenant is required to vacate the residential premises on a date not less than 10 days after the notice has been served. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 19 December 2019 with a termination date of 30 December 2019. As established above, the tenant owes rent which is in contravention of *The Act* and the rental agreement between both parties. I further find that as the date of termination identified on the notice is at least 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).
36. With respect to the notice being contested by the tenant in this matter, it is clear that the termination date identified on the notice is not at least 10 clear days between the date the notice was issued and the date the tenant is required to move out. As such the termination notice (**Exhibit T #1**) does not comply with the requirements of section 19 (1) and as such is determined to be not valid.

37. 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.*

38. As identified above, landlord2 testified that the termination notice was served by placing a copy in the mailbox located on the rented premises which is a permitted method of service identified under section 35.
39. According to the reasons identified above, I find that the termination notice **(Exhibit L # 3)** issued by the landlords to be proper and valid. Therefore, the landlords are 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

40. The landlords' claim for vacant possession succeeds. The landlords are further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

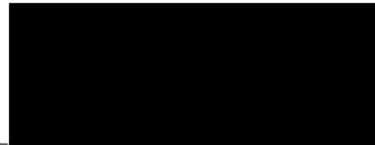
41. The landlords are entitled to the following:

- a) Rent Owing (up to and including 07 January 2020)\$1385.65
- b) Late Fees.....75.00
- c) Hearing Expenses \$20.00
- d) **Total owing to Landlords\$1480.65**

- e) **Vacant Possession of the Rented Premises**
- f) **A daily rate of rent in the amount of \$22.95 beginning 08 January 2020.**
- g) **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.**

09 January 2020

Date



Michael Greene
Residential Tenancies Tribunal