

Residential Tenancies Tribunal

Decision 19-178-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 28 March 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1375.00;
 - b. An order for a payment of utilities in the amount of \$166.70;
 - c. An order for a payment of \$200.00 in compensation for cleaning;
 - d. An order for “other expenses” totalling \$400.00;
 - e. An order for vacant possession of the rented premises; and
 - f. Authorization to retain the security deposit.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. With his application the landlord submitted an affidavit stating that [REDACTED] had been personally served with notice of the hearing on 16 March 2019. He also submitted an affidavit stating that that [REDACTED] had been served on 15 March 2018 by e-mail and he also provided a copy of a text-message from [REDACTED] showing that she had provided the landlord with that e-mail address. The tenants have had 12 and 13 days, respectively, to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Rent - \$1375.00

Relevant Submissions

7. The landlord stated that he had entered into a monthly rental agreement with the tenants on 21 January 2019 and a copy of that executed agreement was submitted at the hearing. According to that agreement, rent was set at \$900.00 per month and the landlord stated that the tenants had agreed to pay a pro-rated rent of \$300.00 for the period from 21 January to 31 January 2019. It is also acknowledged in this agreement that the landlord had received a \$675.00 security deposit though the landlord claimed that the tenants had in fact paid him \$700.00 for that deposit.
8. The landlord testified that the tenants had paid the agreed \$300.00 pro-rated rent for January 2019. With respect to February's rent, he stated that he had entered into an agreement with the tenants that they would pay their rent for February 2019 in 2 installments of \$450.00. He claimed that for the period from 01 February to 15 February 2019 the tenants had paid him a total of \$375.00. He further testified that as the tenants had made an overpayment of \$25.00 on the security deposit, he applied that \$25.00 to this installment of rent bringing the total to \$400.00.
9. Regarding the rent owed for the period from 01 February to 15 February 2019, the landlord claimed that the tenants had informed him that they were required to install locks on their bedroom doors when they moved in and they deducted \$50.00 from the rent that they were supposed to pay during this period. The landlord testified that although he had not agreed to this arrangement, he informed the tenants that he would compensate them from the locks so long as

they provided him with the receipts. He stated that no receipts were ever given to him.

10. The landlord stated that that he received no payments from the tenants for the 2nd half of February 2019 and no payment for March 2019. He is seeking a payment of \$450.00 for February 2019 and \$900.00 for March 2019. He is also seeking an additional \$25.00 from the first half of February 2019 as the tenants had not provided him with any receipts, as agreed, and as they were \$50.00 short on rent for that period.

Analysis

11. I accept the landlord's claim that the tenants had not paid rent as required and that he had only received \$300.00 for January 2019 and a total of \$400.00 for February 2019. I also agree with the landlord that as the tenants had not provided him with the receipts for the locks, as required, he is entitled to a payment of \$25.00 for the first half of February 2019.
12. As the landlord is also seeking an order for vacant possession of the rental unit, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate the rent owing to the date of the hearing to be \$1303.52 (\$475.00 owing for February 2019 (\$450.00 for the period from 16 February to 28 February 2019 and \$25.00 as no receipts were provided to the landlord as agreed) and \$828.52 for March 2019 (\$900.00 per month x 12 months = \$10,800.00 per year ÷ 365 days = \$29.59 per day x 28 days = \$828.52)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$1303.52.
15. The tenants shall pay a daily rate of rent in the amount of \$29.59, beginning 29 March 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Utilities - \$166.70

Relevant Submissions

16. The landlord stated that the tenants were required to have the electricity account placed in their name when they moved into the unit but he testified that it was only switched over on 14 February 2019.
17. At the hearing, the landlord submitted a bill from Newfoundland Power (█ #2) showing that he was charged \$208.21 for the period from 18 January to 14

February 2019 and he calculated that tenants owe him \$187.38 for the period from 21 January to 14 February 2019.

Analysis

18. The rental agreement submitted at the hearing states that the tenants were responsible for paying their own utilities and the submitted bill shows that the landlord was charged for the tenants' electricity consumption up to 14 February 2018.
19. Based on the bill submitted at the hearing, I calculate the landlord is entitled to a payment of \$185.04 ($\$208.21 \div 27 \text{ days} = \$7.71 \times 24 \text{ days} = \185.04).

Decision

20. The landlord's claim for a payment of utilities succeeds in the amount of \$185.04.

Issue 3: Other Expenses - \$400.00

Relevant Submissions

21. The landlord stated that the rental unit was furnished with a flat-screen television and he submitted photographs at the hearing (█ #3, #4) showing that television on the day before the tenants moved in. The landlord testified that he had purchased this television for \$400.00 in 2017.
22. The landlord stated that he carried out an inspection of the rental unit on 06 March 2019 and on that date the television was no longer at the rental unit. To corroborate that claim, he submitted a photograph (█ #5) showing that there is no longer a television on the TV stand.
23. The landlord testified that he sent a text-message to the tenants inquiring about the television but he claimed that they have not responded to his queries.

Analysis

24. I accept the landlord's testimony and evidence in this matter and I agree with him that the television is no longer at the rental unit. I also agree with him that the tenants are liable for the costs to replace the television.
25. Although no quotes or receipts were submitted at the hearing, I was able to find televisions at the website for Best Buy that were roughly the same size and brand as shown in the landlord's photographs. These televisions were retailing for between \$300.00 and \$450.00.

26. Given that the landlord's television was already 2 years old and to account for depreciation, I find that the he is entitled to the lower end of the price range I was able to identify online: \$300.00.

Decision

27. The landlord's claim for the costs of replacing the missing television succeeds in the amount of \$300.00.

Issue 4: Cleaning - \$200.00

Relevant Submissions

28. The landlord stated that the tenants have been smoking cigarettes and cannabis in the rental unit despite the fact that it states in the rental agreement that this is a non-smoking apartment. The landlord testified that he had issued the tenants several notices for them to cease smoking in the apartment but he claimed that they have refused to comply.
29. The landlord pointed out that he lives directly above the tenants with his brother and mother. He claimed that he is allergic to cigarette smoke and he testified that his mother has respiratory problems.
30. Because the tenants had been smoking in the unit, and because the landlord is allergic to cigarette smoke, he argued that he is going to have to hire professional cleaners to come to the unit to rid it of the smell of cigarettes. He claimed that all the surfaces in the unit will now have to be washed down and his furniture will have to be cleaned. He also stated that the HVAC system will also now need to be cleaned and the filter will have to be replaced.
31. No quotes or estimates were submitted at the hearing showing what costs the landlord would incur to have the unit professionally cleaned, but the landlord stated that he had spoken to a cleaning company and was informed that the minimum charge for the remediation of cigarette smoke is \$200.00.

Analysis

32. I found the landlord's testimony to be credible and I accept his claim that the tenants are smoking in the rental unit in contravention of their rental agreement.
33. However, I was not persuaded that the landlord, at this point in time, is entitled to any compensation for cleaning costs. Where a tenant has caused damage to the rental unit or has failed to keep the property clean, the first course of action would be for the landlord to issue a notice to the tenant requiring that they repair the damage or clean the unit within a reasonable period of time. The landlord stated that he had issued notices to the tenants to cease smoking but he had not issued a written notice to them to clean.

34. Furthermore, this tenancy is still ongoing and it possible that the tenants, of their own accord and as reasonably expected, will have the unit cleaned prior to moving out.

Decision

35. The landlord's claim for the costs of cleaning does not succeed.

Issue 5: Vacant Possession of Rented Premises

Relevant Submissions

36. With his application, the landlord submitted a copy of a termination notice which he stated was sent to the tenant's by e-mail on 07 March 2019 (█ #6). A copy of that e-mail was also submitted at the hearing. This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 18 March 2019.
37. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

38. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

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.

39. According to the testimony given by the landlord at the hearing, on 07 March 2019, the day the termination notice was issued, the tenants had been in rental arrears since 02 February 2019 and no payments were received since.

40. As the notice meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.

Decision

41. The landlord’s claim for an order for vacant possession of the rented premises succeeds.

42. The tenants shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 5: Hearing Expenses

43. The landlord submitted a receipt showing that he had paid \$20.00 to file this application. As the landlord’s claim has been successful, the tenants shall pay this hearing expense.

44. The landlord’s claim for hearing expenses succeeds in the amount of \$20.00.

Issue 6: Security Deposit

45. The landlord stated that the tenants had paid a security deposit of \$700.00 on 21 January 2019. As indicated in paragraph 8, above, that payment was \$25.00 in excess of the amount the landlord was permitted to collect and he therefore applied that \$25.00 to the rent that was owed for 01 February 2019. With respect to the remaining \$675.00, as the landlords’ claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Summary of Decision

46. The landlord is entitled to the following:

- A payment of \$1133.56, determined as follows

a) Rent Owing	\$1303.52
b) Utilities	\$185.04
c) Other Expenses	\$300.00
d) Hearing Expenses.....	\$20.00
e) LESS: Security Deposit.....	(\$675.00)
f) Total Owing to Landlord	<u>\$1133.56</u>

- A payment of a daily rate of rent in the amount of \$29.59, beginning 29 March 2019 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenants shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

08 April 2019

Date



John R. Cook

Residential Tenancies Tribunal
