

Residential Tenancies Tribunal

Decision 19-259-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 29 April 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 and she was represented by [REDACTED].
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$750.00;
 - b. An order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The tenant was not present or represented at the hearing. I was able to reach her by telephone from the hearing room but she ended that telephone conversation after I had attempted to mediate this matter and she did not participate in the hearing. 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord submitted an affidavit stating that the tenant was served with notice of the hearing 15 April 2019 and she has had 13 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issue 1: Rent Owing - \$750.00

Relevant Submissions

The Landlords' Position

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 18 October 2018. The agreed rent is set at \$750.00 and the landlord stated that the tenant had paid a security deposit of \$375.00.
9. The landlord stated that the tenant was oftentimes late paying her rent and she sometimes paid it in multiple installments. Nevertheless, for the period ending 31 March 2019, all of the tenant's rent was paid and up-to-date.
10. However, the landlord testified that she received no rent for the month of April 2019 and she is seeking an order for a payment of \$750.00.

Analysis

11. I accept the landlord's claim that the tenant had not paid rent as required. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
12. I calculate the amount owing to be \$715.14 ($\$750.00 \text{ per month} \times 12 \text{ months} = \$9000.00 \text{ per year} \div 365 \text{ days} = \$24.66 \text{ per day} \times 29 \text{ days} = \715.14).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$715.14.
14. The tenant shall pay a daily rate of rent in the amount of \$24.66, beginning 30 April 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

15. With her application, the landlord submitted a copy of a termination notice (█ #2) she stated was posted on the tenant's door on 15 April 2019.
16. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 26 April 2019.
17. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

18. 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.

19. According to the landlord's testimony, on 15 April 2019 the tenant was in arrears in the amount of \$750.00 and had been in arrears since the beginning of that month. The tenant has made no payments to the landlord since the notice was issued and the balance remained at \$750.00 on the effective termination date set out in that notice.
20. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. The tenant 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 3: Security Deposit

23. The landlord submitted a copy of a receipt with her application (█ #1) showing that the tenant had paid a security deposit of \$375.00 on 18 October 2018. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Issue 4: Hearing Expenses

24. As the landlord's claim has been successful, the tenant shall pay her hearing expenses of \$20.00 for the costs of filing this application.

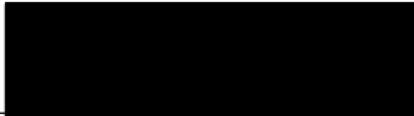
Summary of Decision

25. The landlord is entitled to the following:
 - A payment of \$360.14, determined as follows
 - a) Rent Owing\$715.14
 - b) Hearing Expenses.....\$20.00
 - c) **LESS: Security Deposit..... (\$375.00)**
 - d) Total Owing to Landlord\$360.14
 - A payment of a daily rate of rent in the amount of \$24.66, beginning 30 April 2019 and continuing to the date the landlord obtains possession of the rental unit,
 - An order for vacant possession of the rented premises,

- The tenant 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.

03 May 2019

Date



John R. Cook
Residential Tenancies Tribunal