

## Residential Tenancies Tribunal

Decision 19-269-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:20 pm on 29 May 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$3741.75;
  - b. An order for a payment of hearing expenses in the amount of \$20.00; and
  - c. An order for vacant possession of the rented premises.

### 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*.

### Preliminary Matters

6. The landlord amended the claim at the hearing and stated that she was now seeking \$4404.75 in rent arrears.

## **Issue 1: Rent - \$4404.75**

### **Relevant Submissions**

#### The Landlord's Position

7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 16 March 2016 and a copy of that executed agreement was submitted with her application (█ #1). The current rent is set at \$663.00.
8. The landlord submitted rent records at the hearing (█ #2) showing the payments she had received from the tenant since she had moved into the rental unit. According to these records, the tenant fell into rental arrears shortly after she had moved in and she has been carrying a balance ever since April 2016. The last payment the landlord had received from the tenant was on 03 January 2019 in the amount of \$670.00 bringing the balance to \$1752.75. No payments have been made for February, March, April or May 2019 and the arrears now total \$4404.75.
9. The landlord is seeking an order for a payment of rent in the amount of \$4404.75.

#### The Tenant's Position

10. The tenant did not dispute the landlord's records of the rent payments that she had made and she acknowledged that she currently owes \$4404.75.
11. The tenant stated that she just does not have the money to pay the landlord and she will not receive another cheque until 24 June 2019. She also pointed out that her electricity has just been cut and she needs to come up with \$1100.00 to have it restored and this is her priority right now.

### **Analysis**

12. As the tenant did not contest this portion of the landlord's claim and as she acknowledged that she owes \$4404.75, the landlord's claim succeeds.
13. However, as the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
14. I calculate the rent owing to the date of the hearing to be \$4373.95 (\$3741.75 for the period ending 30 April 2019 and \$632.20 for May 2019 (\$663.00 per month x 12 months = \$7956.00 per year ÷ 365 days = \$21.80 per day x 29 days = \$632.20)).

### **Decision**

15. The landlords' claim for a payment of rent succeeds in the amount of \$4373.95.

16. The tenant shall pay a daily rate of rent in the amount of \$21.80, beginning 30 May 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

## **Issue 2: Vacant Possession of Rented Premises**

### **Relevant Submissions**

#### The Landlord's Position

17. With her application, the landlord submitted a copy of a termination notice which she stated she had sent to the tenant by registered mail on 01 March 2019 (█ #3). She testified that this notice was also sent to the tenant by regular mail. This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 March 2019.
18. The landlord had also submitted a copy of the tracking history (█ #4) showing that a final notice card was left with the tenant on 11 March 2019. The tenant never did collect the notice and it was returned to the landlord.
19. According to the landlord's rent records, the tenant was in arrears in the amount of \$3078.75 when the notice was sent to her and no payments have been made since.
20. The tenant has not vacated the rented premises as required and the landlord is seeking an order for vacant possession of the rented premises.

#### The Tenant's Position

21. The tenant stated that she received a copy of the termination by regular mail. She again acknowledged that she had not paid her rent as required.

### **Analysis**

22. Section 18 of the *Residential Tenancies Act, 2000* states:

#### ***Notice where failure to pay rent***

18. (1) *Notwithstanding subsection 17(1),*

(a) *where*

(i) *residential premises are rented from month to month,*

(ii) *a rental agreement is for a fixed term, or*

*(iii) residential premises are a site for a mobile home, and*

*the rent payable by a tenant is in arrears for 15 days, 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*

23. Section 35 of this *Act* outlines the methods by which notices may be served by landlords on tenants and the relevant subsections states:

***Service of documents***

***35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by***

*...*

*(e) sending it to the tenant by prepaid registered mail or prepaid express post at an address*

*(i) provided by the tenant, or*

*(ii) where the tenant carries on business;*

*...*

*(5) For the purpose of this section, where a notice or document is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the notice or document was prepaid and properly addressed and sent.*

24. Although the tenant had not collected the notice from the Post Office, according to ss. 35.(5) of the *Act*, it is considered to have been served on her on 06 March 2019.
25. According to the landlord's records, after the notice was served the tenant made no other rent payments to the landlord and rent has since come due for April and May 2019. As the tenant had not reduced the balance to zero prior to the effective termination date set out in the notice and as the notice meets the timeframe requirements set out in this section of the *Act*, the notice is valid.

**Decision**

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.

27. 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: Hearing Expenses**

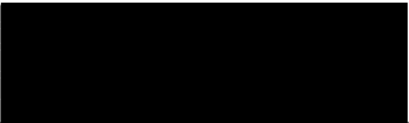
28. The landlord submitted a receipt showing that she had paid \$20.00 to file this application. As the landlord's claim has been successful, the tenants shall pay this hearing expense.

**Summary of Decision**

29. The landlord is entitled to the following:

- A payment of \$4393.95, determined as follows
  - a) Rent Owing .....\$4373.95
  - b) Hearing Expenses.....\$20.00
  
  - c) Total Owing to Landlord .....\$4393.95
- A payment of a daily rate of rent in the amount of \$21.80, beginning 30 May 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 landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

05 June 2019  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal