

Residential Tenancies Tribunal

Decision 19-303-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 14 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”.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, 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 \$2110.00,
 - b. An order for a payment of late fees in the amount of \$75.00, and
 - c. 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 are sections 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. 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 respondent fails 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. The landlord submitted affidavits stating that the tenants were served with notice of the hearing, by e-mail, on 29 April 2019 and they have had 14 days to provide a response. The landlord also submitted copies of those e-mails as well as copies of their rental applications showing that they had provided these e-mails to the landlord. 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.

8. The landlord amended her application at the hearing and stated that she was now seeking rent in the amount of \$820.00.

Issue 1: Rent Owing - \$820.00

Relevant Submissions

9. The landlord entered into a 1-year, fixed-term rental agreement with the tenants, commencing 01 October 2018, and a copy of that executed lease was submitted with her application (█ #1). The agreed rent was set at \$960.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$480.00.
10. The landlord submitted rent records at the hearing (█ #2) showing the payments she had received from the tenants since they had moved into the rented premises. According to these records, the tenants had a zero-balance at the end of January 2019 but they then fell into rental arrears on 02 February 2019. They made some partial rent payments in February and March 2019 and on 30 April 2019 the landlord received a payment of \$1850.00 leaving the tenants with a credit of \$140.00cr. Rent for May 2019 has since come due but no payments have been received during this month.
11. The landlord is seeking an order for a payment of the \$820.00 that is left owing for May 2019 (\$960.00 less the credit of \$140.00cr).

Analysis

12. I accept the landlord's claim that the tenants had not paid rent as required for May 2019. 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.

13. I calculate the amount owing to be \$301.84 (\$441.84 for May 2019 (\$960.00 per month x 12 months = \$11,520.00 per year ÷ 365 days = \$31.56 per day x 14 days = \$441.84) less the credit of \$140.00cr from April 2019).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$301.84.
15. The tenant shall pay a daily rate of rent in the amount of \$31.56, beginning 15 May 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

16. The landlord has assessed late fees in the amount of \$75.00.

Analysis

17. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

18. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

Analysis

19. According to the landlord's rent records, the tenants first fell into rental arrears in November 2018. They brought the balance back to zero at the end of January 2019, fell into arrears again in February 2019 and returned to a zero-balance at the end of April 2019. Since 02 May 2019 the tenants have returned to a negative balance.

20. On review of the landlord's rent records, I cannot determine when it was that she started to assess late fees as the date of assessment is not recorded. I also note that there is no indication on the submitted termination notice (█ #3) that she had assessed late fees. I have to conclude, then, that these fees were assessed when the landlord made application to this Section. That application is dated 12 April 2019.
21. Accordingly, I calculate that as the tenant was in arrears for the period from 12 April to 30 April 2019, she is entitled to a payment of \$41.00 for that period. As the tenants had a credit of \$140.00cr on 30 April 2019, had the landlord recorded that assessment on her records, the balance at the end of April 2019 would have been \$99.00cr.
22. The tenant fell into arrears again on 02 May 2019 and I therefore find that she was entitled to start assessing late fees again on that date. I calculate that the tenant owes an additional \$29.00 from that date to the date of the hearing.

Decision

23. The landlord's claim for late fees succeeds in the amount of \$70.00 (\$41.00 for the period from 12 April to 30 April 2019 and \$29.00 for the period from 02 May to 14 May 2019).

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

24. The landlord's representative submitted a copy of a termination notice at the hearing (█ #3) which she stated was posted on the tenant's door on 18 March 2019.
25. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 30 March 2019.
26. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

27. 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.

- 28. According to the landlord's rent records, on 18 April 2019 the tenants were in arrears in the amount of \$1800.00 and had been in arrears since the beginning of February 2019. The tenants only made 1 payment of \$250.00 to the landlord prior to the effective termination date, 30 March 2019, leaving them with a balance of \$1150.00 on that date.
- 29. As the tenants had not paid off the arrears prior to 30 March 2019 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

- 30. The landlord's claim for an order for vacant possession of the rented premises succeeds.
- 31. 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 4: Security Deposit

- 32. The landlord stated that the tenants had paid a security deposit of \$480.00 on 21 September 2018. As the landlord's claim has been successful, she shall retain that portion of the security deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

- 33. As the landlord's claim has been successful, the tenants shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

- 34. The landlord is entitled to the following:

- Authorization to retain \$391.84 of the security deposit, determined as follows:
 - a) Rent Owing\$301.84
 - b) Late Fees\$70.00
 - c) Hearing Expenses.....\$20.00
 - d) Total\$391.84

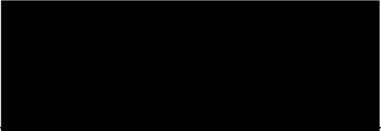
- A payment of a daily rate of rent in the amount of \$31.56, beginning 15 May 2019 and continuing to the date the landlord obtains possession of the rental unit,

- An order for vacant possession of the rented premises,

- The tenants shall also pay to the 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.

28 May 2019

Date



John R. Cook
Residential Tenancies Tribunal