

Residential Tenancies Tribunal

Decision 19-309-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 11 June 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 respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not participate in the hearing.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$2629.98;
 - 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, 35 and 42 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 her application the landlord submitted affidavits stating that she had sent the notice of the hearing to the tenants by registered letter on 01 May 2019 and 09 May 2019. According to the submitted tracking history, the tenants never did collect these notices.

7. According to section 42 of the *Residential Tenancies Act, 2019*:

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

(a) a question arising under this Act or the regulations;

(b) whether a provision of a rental agreement has been contravened; or

(c) whether a provision of this Act or the regulations has been contravened.

(2) An application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister.

(3) The applicant shall serve the application submitted to the director under subsection (2) by

...

(b) sending it to the other party by prepaid registered mail or prepaid express post at an address provided by the other party;

...

(6) For the purpose of this section, where a copy of the application 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 copy of the application was prepaid and properly addressed and sent.

As the notices of the hearing were not collected by the tenants, according to s. 42.(6) they are considered to have been served on the tenants on 06 May and 14 May 2019.

8. 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.
9. The landlord amended her claim and stated that she was now seeking \$3447.98 in rental arrears.

Issue 1: Rent - \$3447.98

Relevant Submissions

10. The landlord stated that she had entered into a monthly rental agreement with the tenants on 09 August 2019 and a copy of the most recently renewed lease was submitted with her application (█ #1). The current rent is set at \$950.00.
11. The landlord submitted rent records at the hearing (█ #2) showing the payments she had received from the tenants since June 2018, when they last had a zero balance.
12. According to these records, although the tenants had been making periodic rent payments, the amount paid was always lower than the amount that was charged and there were several months where no payments were made at all.
13. The last payment the tenants made was on 23 May 2019, in the amount of \$150.00, leaving them with a balance owing of \$2497.98. Since then rent for June has come due and the current balance sits at \$3447.98.

Analysis

14. I accept the landlord's claim that the tenants have not paid rent as required and her records show that they are currently in arrears in the amount of \$3447.98
15. 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.
16. I calculate the rent owing to the date of the hearing to be \$2841.42 (\$2497.89 for the period ending 31 May 2019 and \$343.53 for June 2019 (\$950.00 per month x 12 months = \$11,400.00 per year ÷ 365 days = \$31.23 per day x 11 days \$343.53)).

Decision

17. The landlords' claim for a payment of rent succeeds in the amount of \$2841.42.

18. The tenants shall pay a daily rate of rent in the amount of \$31.23, beginning 12 June 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

- 19. With her application, the landlord submitted a copy of a termination notice (█ #4) which she stated was sent to the tenants by registered letter on 04 February 2019. This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 28 February 2019.
- 20. The landlord had also submitted a copy of the tracking history (█ #5) showing that this notice was not collected by the tenants and was eventually returned to the landlord.
- 21. The tenants have not vacated the rented premises as required and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

22. 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.

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 tenants 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 them on 09 February 2019.
25. According to the landlords' rent records, on 09 February 2019, the day the termination notice was considered served, the tenants were in rental arrears in the amount of \$2139.98. They had been in arrears since July 2018 and although they have made several payments to the landlord since the notice was issued, they failed to bring the balance owing down to zero and the arrears have continued to accumulate.
26. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

27. The landlords' claim for an order for vacant possession of the rented premises succeeds.
28. The tenants shall 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.

Issue 3: Hearing Expenses

29. The landlord submitted a hearing expense claim form and 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

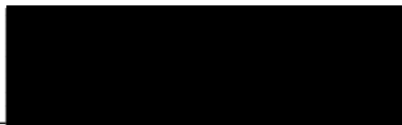
30. The landlord is entitled to the following:

- A payment of \$2861.42, determined as follows
 - a) Rent Owing\$2841.42
 - b) Hearing Expenses.....\$20.00

 - c) Total Owing to Landlord\$2861.42
- A payment of a daily rate of rent in the amount of \$31.23, beginning 12 June 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.

14 June 2019

Date



John R. Cook
Residential Tenancies Tribunal