

Residential Tenancies Tribunal

Decision 19-311-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:25 am on 09 May 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”, was represented at the hearing by [REDACTED] and a letter of authorization is on file.
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 \$1250.00,
 - b. An order for a payment of late fees, 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 tenant was not present or represented at the hearing and I was unable to reach him 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 respondent's absence so long as he has been properly served. The landlord's representative submitted an affidavit stating that the tenant was personally served with notice of the hearing on 28 April 2019 and he has had 10 days exactly 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 his absence.
8. On the landlord's application he names both [REDACTED] and [REDACTED] [REDACTED] and respondents/tenants. On review of the submitted rental agreement, however, I noted that only [REDACTED] was listed as a tenant. [REDACTED] is listed as an occupant and she did not sign the agreement. Accordingly, I removed [REDACTED] as a named respondent in this application.
9. The landlord amended the application at the hearing and stated that she was now seeking an additional \$250.00 in rent for a total claim of \$1500.00.

Issue 1: Rent Owing - \$1500.00

Relevant Submissions

10. The landlord entered into a rental agreement with the tenant commencing 01 September 2018 and a copy of that executed agreement was submitted at the hearing ([REDACTED] #1). The agreed rent was set at \$1250.00 per month and the landlord stated that the tenant had paid a security deposit of \$625.00.
11. The landlord's representative submitted rent records at the hearing showing the payments she had received from the tenant since he had moved into the rented premises. According to these records, rent was paid and up-to-date for the period ending 31 March 2019. Only 1 other payment was received after March 2019—\$1000.00 on 02 May 2019 and a copy of the INTERAC e-Transfer receipt for that payment was submitted at the hearing ([REDACTED] #4).
12. The landlord is seeking an order for a payment of the remaining \$250.00 that is left owing for April 2019 and a payment of \$1250.00 for April 2019.

Analysis

13. I accept the landlord's representative'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 he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
14. I calculate the amount owing to be \$619.90 (\$1250.00 for April 2019 less a credit of \$630.10cr for May 2019 (\$1250.00 per month x 12 months = \$15,000.00 per year ÷ 365 days = \$41.10 per day x 9 days = \$369.90 less the payment of \$1000.00 made on 02 May 2019)).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$619.90.
16. The tenant shall pay a daily rate of rent in the amount of \$41.10, beginning 10 May 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

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

Analysis

18. 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.

19. 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.

Decision

20. As the tenant has been in arrears since 02 April 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

21. The landlord's representative submitted a copy of a termination notice at the hearing (█ #5) which she stated was posted on the tenant's door on 08 April 2019.
22. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 19 April 2019.
23. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

24. 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.

25. According to the landlord's rent records, on 08 April 2019 the tenant was in arrears in the amount of \$1250.00 and had been in arrears since the beginning of that month. The tenant made no payments to the landlord prior to the effective termination date set out in that notice, 19 April 2019, and rent for May 2019 has

since come due. The tenant did make a payment of \$1000.00 on 02 May 2018 but this payment still did not reduce the balance to zero.

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

Decision

27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. 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 4: Security Deposit

29. The landlord stated that the tenant had paid a total security deposit of \$625.00, in 2 installments, on 01 September and 15 September 2019. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

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

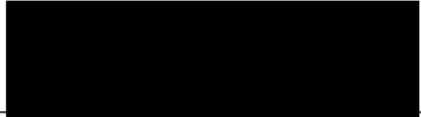
Summary of Decision

31. The landlord is entitled to the following:
- A payment of \$89.90, determined as follows
 - a) Rent Owing\$619.90
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) **LESS: Security Deposit..... (\$625.00)**
 - e) Total Owing to Landlord\$89.90
 - A payment of a daily rate of rent in the amount of \$41.10, beginning 10 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 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.

23 May 2019

Date



John R. Cook
Residential Tenancies Tribunal