

Residential Tenancies Tribunal

Decision 19-316-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:05 am on 06 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

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$5034.00;
 - 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* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant, [REDACTED], attended our offices prior to the commencement of the hearing and he had a few words with the landlord. He informed me before the hearing began that he did not wish to mediate this matter and did not wish to

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 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 an affidavits stating that the tenants had been served with notice of the hearing, by registered letter, on 03 May and 07 May 2019, and they have had well over 10 days to provide a response. The landlord also submitted the tracking history associated with those letters showing that the tenants had signed for them. 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.

7. The landlord amended her application at the hearing and stated that she is now seeking \$6131.00 in rental arrears.

Issue 1: Rent - \$6131.00

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a monthly rental agreement with the tenants on 13 June 2011 and a copy of that agreement was submitted with her application (█ #1). The current rent is set at \$1252.00.
9. The landlord submitted rent records at the hearing (█ #2) showing the payments the tenants had been making since November 2017, when they last had a zero balance.
10. According to these records, the tenants have been making regular payments to the landlord but they were almost always for an amount less than what they were charged and the rental arrears steadily accrued through 2018 and 2019. In April 2019 they only paid a total of \$400.00 and in May 2019 they paid \$380.00. No payments have been made for June 2019 and the current balance sits at \$4870.00.
11. In addition to these arrears, the landlord stated that it is policy with █ that the tenants' rent is determined as function of their household income. She stated that according to the information that the tenants had provided her back in 2017, █ set the rent at \$263.00 for October, November and December 2017, for a total of \$789.00.
12. The landlord stated that in January 2018 it was determined that the tenant's household income was greater in those 3 months than the tenants had led them

to believe. The landlord has therefore retroactively charged the tenants an additional \$1261.00 for that period.

13. The landlord is seeking an order for a payment of rent in the amount of \$6131.00 (\$4870.00 + 1261.00).

Analysis

14. I accept the landlord's claim that the tenants had not been paying rent as required and her records show that they are currently in arrears in the amount of \$4870.00.
15. With respect to the back charges, s. 16 of the lease submitted by the landlord states:

Recalculation of Rent

In the event that the tenant furnishes any incorrect or misleading information as to total household income, household composition or assets during application for rental of the premises or in any subsequent statement furnished pursuant to this Lease or any renewal thereof,

In addition to any other remedies which the Landlord may exercise, the rent shall be calculated, based upon the corrected information, in accordance with the Landlords rent-to-income scale and readjusted accordingly.

In the event that such recalculation indicates that additional rent is owing, the Tenant shall, upon demand by the Landlord, forthwith pay such additional rent, including retroactive increases in the rent to the first of the month upon which rent was charged on the basis on the misleading or incorrect information aforesaid.

16. I accept the landlord's claim that the tenants had had not provided her with accurate information in 2017 to make an accurate determination as to what the rate of rent ought to be set at based on ██████'s rent-to-income scale. As the above quoted section of their rental agreement allows the landlord to correct that rate retroactively, I find that she is entitled to an additional award of \$1261.00 in rent.
17. Accordingly, I agree with the landlord that the tenants are in arrears in the amount of \$6131.00. However, 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.
18. I calculate that amount to be \$5125.96 (\$3618.00 owing for the period ending 31 May 2019, \$1261.00 in back charges and \$246.96 for June 2019 (\$1252.00 per

month x 12 months = \$15,024.00 per year ÷ 365 days = \$41.16 per day x 6 days = \$246.96)).

Decision

19. The landlords' claim for a payment of rent succeeds in the amount of \$5125.96.
20. The tenants shall pay a daily rate of rent in the amount of \$41.16, beginning 07 June 2019, and continuing to the date the landlords obtain vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

21. With her application, the landlord submitted a copy of a termination notice (█ #3) which she stated was sent to the tenants by registered letter on 25 January 2019. This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 01 March 2019.
22. The landlord had also submitted a copy of the tracking history (█ #4) showing that this notice was signed for by the tenants on 29 January 2019.
23. 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

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 29 January 2019, the day the termination notice was issued, the tenants were in rental arrears in the amount of \$2259.00 and they also owed back charges totalling \$1261.00. They had been in arrears since December 2017.
26. The rent records show that the tenants had made several payments to the landlord between 29 January 2019 and 01 March 2019, the terminate date set out in the notice, but they failed to reduce the balance to zero and they remained in arrears to the date of the hearing.
27. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

28. The landlords' claim for an order for vacant possession of the rented premises succeeds.
29. 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

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

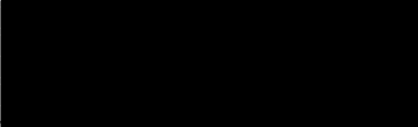
Summary of Decision

31. The landlord is entitled to the following:
 - A payment of \$5145.96, determined as follows
 - a) Rent Owing\$5125.96
 - b) Hearing Expenses.....\$20.00
 - c) Total Owing to Landlord\$5145.96
 - A payment of a daily rate of rent in the amount of \$41.16, beginning 07 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 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.

14 June 2019

Date



John R. Cook
Residential Tenancies Tribunal