

Residential Tenancies Tribunal

Decision 19-0319-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:00 am on 16 May 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via teleconference to Residential Tenancies in Mt. Pearl.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$600.00 per month and due on the 1st of each month. A security deposit in the amount of \$200.00 was collected on the tenancy on or about March 2011. The landlord indicated that a termination notice was issued to the tenant on 26 April 2019 for the intended termination date of 07 May 2019.
5. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, 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/she has been properly served.

The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **02 May 2019** by serving the documents to the tenant personally at the rental address [REDACTED].

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Payment of rent owing **\$1300.00**;
 - b) Vacant possession of the rented premises;
 - c) Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. Also relevant and considered in this case are Sections 19, 24, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owning - \$1300.00

Relevant Submissions

Landlord Position

10. The landlord stated that the tenancy was a verbal rental agreement with the tenant, commencing March 2011. The agreed rent was set at \$600.00 per month and due on the 1st day of each month with a security deposit in the amount of \$200.00 collected on this tenancy at or about March 2011. The landlord stated that rent has not been paid for February and March 2019 in the amount of \$1200.00 and an additional amount of \$100.00 outstanding for April 2019. The landlord supplied the rental records (**Exhibit L # 1**) which is a rent ledger for the payments received from the tenant. The landlord stated as of the hearing date 16 May 2019 rent was outstanding in the amount of \$1300.00 as claimed by the landlord up to April 30, 2019. The landlord testified that the Department of Advanced Education and Skills (AES) have paid the rent in full for May 2019.

11. The landlord explained the situation around March rent by stating that by the last week of March, rent was not paid by the tenant so the landlord and tenant went to AES seeking to have the rent paid directly to the landlord. The landlord advised that the worker had asked the tenant what happened to the cheque sent to her for March and the response was "I spent it".

Tenant Position

12. The tenant disputes the version of events presented by the landlord. The tenant acknowledges rent owing for February 2019 and \$100.00 for April 2019. The tenant stated she's not sure exactly what happened other than to state that it all went through the Department of Advanced Education and Skills (AES) and was paid. The tenant added that she didn't have any paper work with her.

Analysis

13. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
14. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the verbal rental agreement established when the tenancy began.
15. I reject the tenant's notion that rent records are not accurate and accept that rent is owed for the period ending 30 April 2019 in the amount of **\$1300.00**. Both landlord and tenant agree in principle that rent for March 2019 was being paid by AES. It was stated that both parties attended to AES in late March to have rent paid directly to the landlord. Given this fact, anything prior to this reassignment of funds, would be paid directly to the client to pay any and all bills including rent. For this reason, I find that rent for March was sent to the tenant and in all likelihood, was spent on something other than the required rent.
16. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$19.73** less any payments received from the Department of Advanced Education and Skills, beginning on 01 June 2019 and continuing until the day the landlord obtains vacant possession of the rented premises. The daily rate is calculated as ($\$600.00 \times 12 \text{ months} = \$7200.00 \div 365 \text{ days} = \19.73 per day)

Decision

17. The landlord's total claim for rent succeeds as follows:

- a) Rent owing up to April 30, 2019 \$1300.00
- b) Total Arrears \$1300.00

- c) A daily rate beginning 01 June 2019 \$19.73

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

18. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
19. The landlord testified that when the tenant fell in arrears, she issued a termination notice under section 19 of the *Act* (**Exhibit L # 3**) to terminate the tenancy on 02 May 2019. She testified that the notice was served by personal service. The landlord testified that there is 1 adult living in the unit.
20. The landlord additionally issued a termination notice under section 24 of the *Residential Tenancies Act, 2018* (**Exhibit L # 3**). The landlord testified that at one point there was a lady who came to the property looking for her husband. The landlord testified that this lady was screaming and yelling foul language and when her husband came out of the tenant's apartment, there was more foul language.
21. In another incident that landlord testified that about 1 week later 2 unknown men came out of the tenant's apartment and engaged in a fist fight on the lawn. They also added that many people come and go and she fears that there are drugs involved.

Tenant Position

22. The tenant disputes the landlord's notion and states that there is no activity around.

Analysis

23. Established by undisputed statement of fact in paragraph 10, the rental agreement is a verbal monthly tenancy with a rental rate of \$600.00 per month. The validity of the termination notice is determined by its compliance with the

notice requirements identified in sections 19(1)(b), (4) and 34 as well as the service requirements identified in section 35.

24. The issue of rental arrears has been determined in paragraph 15 above confirming that the tenant owes rent to the landlord.
25. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenant a termination notice to vacate the property not less than 10 days after the notice is served on the tenant. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 26 April 2019 with a termination date of 07 May 2019. As established in paragraph 15, rent had been in arrears since February 2019. As rent had been in arrears for 2 months, I find this is well beyond the 5 day requirement set out in the *Act*. I further find that as the date of termination identified on the notice is 10 clear days between the date the notice was issued and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 19.(1)(b).
26. Sections 19. (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find that all these criteria have been met.

section 19. (4)

In addition to the requirements under Section 34, a notice under this section shall

- (a) be signed by the landlord;*
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) be served in accordance with section 35.*

section 34

A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*

27. As identified in paragraph 19, the landlord testified that the termination notice was served by personal service 26 April 2019 which is a permitted method of service identified under section 35.

28. According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession of the property along with an order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.
29. With regard to the termination notice issued under section 24 (interference with peaceful enjoyment), a vacant possession order has been granted based on non-payment of rent and therefore any further discussion or evaluation on the merits of a termination notice issued under section 24 (interference with peaceful enjoyment) is unnecessary. As such, no further analysis or discussion will proceed on this portion of the termination notice.

Decision

30. The landlord's claim for vacant possession succeeds. The landlord is further awarded cost associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 3: Hearing Expenses

Landlord Position

31. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████) (**Exhibit L # 2**). The landlord is seeking this cost.

Analysis

32. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

33. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

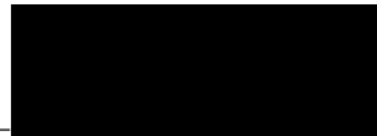
Summary of Decision

34. The landlord is entitled to the following:

- a) Rent Owing\$1300.00
- b) Hearing Expenses \$20.00
- c) Total Owing to the Landlord\$1320.00**
- d) Vacant Possession of the Rented Premises
- e) A daily rate of rent set at **\$19.73** beginning 01 June 2019 and continuing until the day the landlord obtains vacant possession of the Rented Premises.
- f) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

29 May 2019

Date



Michael Greene
Residential Tenancies Tribunal