

Residential Tenancies Tribunal

Decision 19-345-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 22 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”, participated in the hearing. 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 \$3100.00,
 - b. An order for vacant possession of the rented premises, and
 - c. Authorization to retain the security deposit.

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 sections 19, 35 and 42 of the *Residential Tenancies Act, 2018*.

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. The landlord testified that he served the tenant's with notice of this hearing, by e-mail, on 06 May 2019. He also submitted copies of those e-mails at the hearing and he testified that the e-mail address had been provided to him by [REDACTED] via a text message.

7. On review of the e-mails, I note that they were sent at approximately 8:50 pm on 06 May 2019. Section 42 of the *Residential Tenancies Act, 2018* states that an applicant may serve a respondent with the application electronically but the day it is considered to have been served depends on the date and time it is sent. I quote:

Application to director

42. (7) For the purpose of this section, where a copy of the application is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent before 4 p.m., or the next day that is not a Saturday or holiday, if the copy of the application is sent after 4 p.m.

As the e-mails were sent after 4:00 pm, the tenants are considered to have been served on 07 May 2019 and they have had 14 days to respond. 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.

Issue 1: Rent Owing - \$3100.00

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenants on 01 March 2019. The rent is set at \$1550.00 per month and it was agreed that the tenants could pay that rent in 2 installments, on the 1st and 15th days of the month. The tenants also paid a security deposit of \$775.00.
9. The landlord stated that he received all of the rent for March 2019 but he testified that no payments were made for April or May 2019.
10. The landlord is seeking an order for a payment of \$3100.00 for those 2 months.

Analysis and Decision.

11. I accept the landlord's claim that the tenants had not paid rent as required and that he had received no rent for the last 2 months. As such, his claim succeeds in the amount of \$3100.00 (\$1550.00 per month x 2 months).

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

12. The landlord submitted a copy of a termination notice with his application (█ #1) which he stated he had e-mailed to the tenants on 06 May 2019. Copies of these e-mails were also submitted at the hearing (█ #2. █ #3).
13. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 May 2019.
14. The landlord stated that the tenants had not vacated the premises as required and he is seeking an order for vacant possession of the rented premises.

Analysis

15. 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),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

(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.

16. Section 35 of this *Act* states that a termination notice may be served electronically but, as with an application, the day it is considered to have been served depends on the date and time the e-mail is sent. Section 35.(6) states:

Service of documents

35. (6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

17. The termination notices submitted at the hearing were sent at 8:50 pm and 8:54 pm and they are therefore considered to have been served on 07 May 2019. A termination notice issued under this *Act* must specify a termination date that is “not less than 10 days after the notice is served on the tenant”. The words “not less than” mean that there have to be 10 clear days between the date the notice is served (07 May 2019) and the date the tenants are required to vacate. But on 07 May 2019, the earliest termination date the landlord could have specified in this notice would have been 18 May 2019.
18. As the termination notice does not meet the timeframe requirement set out in this section of the *Act*, it is invalid.

Decision

19. The termination notice issued to the tenants on 07 May 2019 is not a valid notice.
20. The landlord’s claim for an order for possession of the rented premises does not succeed.

Issue 3: Security Deposit

21. The landlord stated that the tenant had paid a security deposit of \$775.00 on 05 April 2019. He is seeking authorization to retain that deposit and apply it towards the rent that is owing.

Analysis and Decision

22. As the landlord's claim for rent has succeeded, he is authorized to retain the deposit and set that amount off against those arrears.

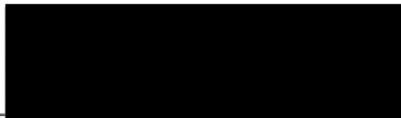
Summary of Decision

23. The landlord is entitled to the following:

- A payment of \$2275.00, determined as follows
 - a) Rent Owing\$3100.00
 - b) LESS: Security Deposit..... (\$775.00)
 - c) Total Owing to Landlord\$2325.00
- The landlord's claim for an order for vacant possession of the rented premises does not succeed.

30 May 2019

Date


John R. Cook
Residential Tenancies Tribunal