

## Residential Tenancies Tribunal

Decision 19-525-05

John R. Cook  
Adjudicator

---

### Introduction

1. The hearing was called at 11:07 am on 20 August 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 \$7600.00, and
  - b. 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*.

### Preliminary Matters

6. The tenants were not present or represented at the hearing. [REDACTED] was present prior to the commencement of the hearing but he declined to participate and left our offices before the hearing began. 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 his application, the landlord submitted affidavits showing that the tenants were served with notice of this hearing on 08 August 2019 and they have had 11 days to provide a response. He also submitted copies of those e-mails at the hearing. 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 his application at the hearing and stated that he was now seeking \$8900.00 in rental arrears.

### **Issue 1: Rent Owing - \$8900.00**

#### **Relevant Submissions**

8. The landlord stated that he had entered into a monthly rental agreement with the tenants in 2016. The current rent is set at \$1300.00 per month.
9. The landlord testified that the tenants had been having difficulty paying their rent for over a year and they kept falling behind in their payments. In support of that claim he submitted copies of text-message exchanges he had been having with the tenants since June 2018. In many of these exchanges, the landlord reminds the tenants that they are late paying their rent or he points out that they have accumulated significant arrears. In response, the tenants acknowledge that they had fallen behind and they continually promise that they will make payments to catch up.
10. The landlord testified at the hearing that he has received no rent from the tenants for the past 3 months—June, July and August 2019—and he stated that they already owed him \$5000.00 prior to June 2019.
11. To establish that the tenants owed him \$5000.00 prior to June 2019, he again pointed to the text-message exchanges in which the tenants acknowledge that they owe rent. He also submitted copies of receipts for the INTERAC e-Transfer payments made by the tenants.
12. No rent records were submitted at the hearing or with the landlord's application. He stated that it was difficult to keep track of the rent that was owed because it was sometime paid by e-Transfer and sometimes in cash and the tenants would not accept receipts.
13. The landlord is seeking an order for a payment of rent in the amount \$8900.00 (\$5000.00 + \$3900.00 (3 months x \$1300.00 per month)).

## Analysis

14. On review of the text-messages submitted by the landlord, it is clear that the tenants had fallen behind in their rent payments in 2018 and they acknowledge that they owe him different amounts at different times. However, these exchanges do not show what payments had been made to the landlord and I am unable to discern if the tenant's promises to pay rent were fulfilled or not.
15. I have examined the receipts of the INTERAC e-Transfers submitted by the landlord and they show that the tenants had paid \$1400.00 in May 2019, \$1400.00 in April 2019 and the required \$1300.00 for March 2019. The receipts also show that the tenants had only paid \$900.00 for February and only \$1200.00 for January 2019. Based on these receipts alone, it appears that the tenants owe \$4100.00 in 2019, for the period ending 31 August 2019.
16. However, the landlord also stated that the tenants had sometimes been making cash payments, but no record of those payments was submitted at the hearing and no rent ledger was submitted at the hearing or with the landlord's application detailing these payments.
17. Without such evidence, it is impossible for me to determine exactly how much rent the tenants owe to the landlord. I don't know, for instance, if any cash payments were made in 2019 to reduce the arrears of \$4100.00.
18. When I pointed out to the landlord the problem I would have in making a determination about the amount of rent that was owing, he suggested I drop his claim for the \$5000.00 and make a decision based on the past 3 months alone.
19. Although the landlord stated no rent was paid in June, July and August 2019 his e-Transfer receipts show that the tenants did make a \$100.00 payment in June 2019.
20. I find, then, that the tenants probably owe \$1200.00 for June, \$1300.00 for July and \$1300.00 for August 2019.
21. 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 day of the hearing and a per diem thereafter.
22. I calculate the amount owing to be \$3354.80 (\$2500.00 for the period ending 31 July 2019 (\$1200.00 + \$1300.00) and \$854.80 for August 2019 (\$1300.00 per month x 12 months = \$15,600.00 per year ÷ 365 days = \$42.74 per day x 20 days = \$854.80)).

## Decision

23. The landlord's claim for a payment of rent succeeds in the amount of \$3354.80.

24. The tenants shall pay a daily rate of rent in the amount of \$42.74, beginning 21 August 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

## Issue 2: Vacant Possession of the Rented Premises

### Relevant Submissions

25. With his application the landlord submitted a copy of a termination notice which he stated was delivered to the tenants by a process server on 03 July 2019 (█ #2). He also submitted into evidence an affidavit from that process server confirming that he had personally delivered that notice to the tenants on 03 July 2019.
26. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 14 July 2019.
27. 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

28. 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.*

29. According to the landlord's testimony, on 03 July 2019 the tenants had been in rental arrears for over a year. Although I have not been able to determine exactly how much money the tenants owed to the landlord prior to June 2019, I accept that testimony.

30. According to the evidence submitted at the hearing, the tenants have made 1 payment of \$100.00 since the beginning of June 2019.
31. As the tenants were carrying rental arrears when the notice was issued on 03 July 2019 and as no payments were made since the notice was issued, it is a valid notice.

### **Decision**

32. The landlords' claim for an order for vacant possession of the rented premises succeeds.
33. 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.

### **Summary of Decision**

34. The landlord is entitled to the following:
  - A payment of rent in the amount of \$3354.80
  - A payment of a daily rate of rent in the amount of \$42.74, beginning 21 August 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.

04 September 2019

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal