

Residential Tenancies Tribunal

Decision 19-611-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 21 August 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 respondent, [REDACTED], hereinafter referred to as “the tenant”, 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 \$2150.00; 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* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no telephone number available where she could be reached. 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 she has been properly served. The landlord submitted an affidavit with his application stating that he had sent the notice of the hearing to the tenant on 02 August 2019 by registered mail. The tracking history associated with that letter shows that the tenant had not collected that notice from the Post Office prior to the hearing date. Section 42.(6) of the *Residential Tenancies Act, 2018* states that where the application is sent by registered mail, it is considered to have been served on the fifth day after mailing. Accordingly, in this case, the tenant is considered to have been served on 07 August 2019. 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 her absence.

Issue 1: Rent Owing - \$2150.00

Relevant Submissions

The Landlords' Position

7. The landlord stated that he purchased the tenant's house in 2019. After the sale was complete he rented that same house to the tenant while she looked for a new home. That agreement commenced on 01 June 2019.
8. The landlord stated that when he entered into this rental agreement, it was agreed that the tenant would only live at the unit for 2 months and she would pay \$650.00 in rent for each of those 2 months. It was also agreed that if the tenant stayed any longer than the agreed 2-month term, the monthly rent would increase to \$850.00.
9. The landlord stated that the tenant paid none of the agreed rent and he is seeking an order for a payment of \$650.00 for each of June and July 2019 as well and the increased payment of \$850.00 for August 2019, for a total claim of \$2150.00.

Analysis

10. I have reviewed the landlord's testimony and evidence in this matter and I accept his claim that the tenant had not paid the agreed rent for June, July or August 2019.
11. Regarding the rent for August 2019, section 12.(1)(b) *Residential Tenancies Act, 2018* states that a landlord shall not require or accept from a tenant a single rental payment that is greater than any other regular rental payment. The regular rental payment in this tenancy is \$650.00 per month and the landlord and tenant were therefore prohibited from entering into any agreement whereby August's rent would be \$850.00.

12. If the landlord did wish to increase the rent to \$850.00, then according to section 16 of this *Act*, he would first have to give the tenant a 6-month notice that the rent was increasing and he would not be able to increase that rent during the first 12 months of this tenancy.
13. I conclude then that the rent for August 2018 is \$650.00, not \$850.00.
14. 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. I calculate the amount owing to be \$1748.77 (\$1300.00 for the period ending 31 July 2019 and \$448.77 for August 2019 (\$650.00 per month x 12 months = \$7800.00 per year ÷ 365 days = \$21.37 per day x 21 days = \$448.77)).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$1748.77.
16. The tenant shall pay a daily rate of rent in the amount of \$21.37, beginning 22 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

The Landlords' Position

17. With his application, the landlord had submitted a copy of a termination notice (█ #4) which he stated had been posted on the door to the rented premises on 02 August 2019.
18. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 13 August 2019.
19. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

20. 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.

21. According to the evidence submitted at the hearing, on 02 August 2019 the tenant was in arrears in the amount of \$1950.00.00 and had been in arrears since the beginning of June 2019. No payments have been made since the notice was issued.
22. As the notice meets the timeframe requirements set out in section 19 of the *Act* it is a valid notice.

Decision

23. The landlord's claim for an order for vacant possession of the rented premises succeeds.
24. 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.

Issues 3: Hearing Expenses

25. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application as well as a receipt for \$14.82 for the costs of sending the application to the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expenses.

Summary of Decision

26. The landlord is entitled to the following:
 - A payment of \$1783.59, determined as follows:

- a) Rent Owing\$1748.77
- b) Hearing Expenses.....\$34.82

- c) Total Owing to Landlord\$1783.59

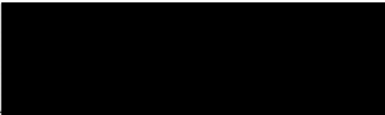
- A payment of a daily rate of rent in the amount of \$21.37, beginning 22 August 2019 and continuing to the date the landlord obtains possession of the rental unit,

- An order for vacant possession of the rented premises,

- The 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.

04 September 2019

Date



John R. Cook
Residential Tenancies Tribunal