

Residential Tenancies Tribunal

Decision 19-0712-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 02 October 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.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing but I was able to reach her by telephone. She participated in about half of the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$400.00; and
 - b. An order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The landlord called [REDACTED] ([REDACTED]) as a witness.

Issue 1: Rent Owing - \$400.00

Relevant Submissions

The Landlord's Position

8. The tenant moved into the basement apartment of this home approximately 8 years ago. The homeowner died 2 years ago and the landlord took over management of the property at that time. The rent for the basement apartment was set at \$350.00 per month.
9. Because of flooding issues in the basement apartment, the tenant agreed to rent the upstairs apartment, commencing 09 August 2019.
10. The landlord testified that the tenant had agreed to pay \$700.00 per month in rent for the upstairs apartment. The landlord's witness, ■■■, testified that she was present when the tenant agreed to pay \$700.00 per month.
11. Since the tenant moved into the upstairs' unit, the landlord has only received 2 rent payments. He stated that he had received \$300.00 on 30 August 2019 and \$675.00 on 30 September 2019.
12. He is seeking an order for the remaining \$350.00 owing for August 2019, \$400.00 that is owing for September 2019 and the remaining \$25.00 for October 2019.

The Tenant's Position

13. The tenant testified that she had agreed to rent the upstairs apartment for \$500.00 per month, not \$700.00.
14. She stated that she does not owe the landlord any rent as she paid off all of the arrears on 30 September 2019. She testified that she had paid the landlord a total of \$800.00 on that date and only owes him \$30.00. Some of that \$800.00 payment was for the electricity bill which was in the landlord's name.

Analysis

15. The burden of proof lies with the landlord to establish the terms of the rental agreement. Although the tenant testified that she had agreed to rent the upstairs apartment for \$500.00, the landlord testified that the agreement was that the rent would be \$700.00. As the landlord's testimony was corroborated by his witness, SF, I therefore find that his version of event is more probable.
16. I also accept the landlord's testimony concerning the payments he had received since the tenant moved upstairs. As the rent was set at \$700.00 per month, I find that the landlord is entitled to a payment of \$775.00 (\$350.00 for August 2019, \$400.00 for September 2019 and \$25.00 for October 2019).

Decision

17. The landlord's claim for a payment of rent succeeds in the amount of \$775.00.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

18. With his application, the landlord submitted a termination notice (█ #1).
16. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 September 2019.
17. Although the notice is dated 06 September 2019 the landlord stated, repeatedly, that it was not given to her on that date. He stated that on 06 September 2019 he filed his application with this Section, but he testified that he did not deliver the notice to the tenant on that date.
18. The landlord stated that he delivered the application and notice of hearing to the tenant on 20 September 2019 and he stated that the termination notice was attached to that application. He testified that he had not provided the tenant with the termination notice at any time prior to that date.
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 landlord's testimony, the termination notice was delivered to the tenant on 20 September 2019, even though it is dated 06 September 2019.
22. Although the tenant had been in arrears for longer than 5 days on 20 September 2019, the day the notice was served, the earliest termination date the landlord could have specified in that notice would have been 01 October 2019, 10 clear days after it was served on the tenant.
23. As the submitted termination notice has a termination date of 17 September 2019, 3 days before it was given to the tenant, it does not meet the timeframe requirements set out in this section of the *Act* and is therefore invalid.

Decision

24. The termination notice issued to the tenant on 20 September 2019 is not a valid notice.
25. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 3: Hearing Expenses

26. As the landlord's claim has been partly successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

27. The landlord is entitled to a payment of \$795.00, determined as follows:

- a) Rent Owing\$775.00
- b) Hearing Expenses.....\$20.00

- c) Total Owing to Landlord\$795.00

28. The landlord's claim for an order for vacant possession does not succeed.

07 October 2019

Date



John R. Cook
Residential Tenancies Tribunal