

Residential Tenancies Tribunal

Decision 19-0846-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 03 December 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”, participated by teleconference.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$955.00;
 - b. An order for a payment of late fees in the amount of \$75.00;and
 - c. 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 are Sections 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The landlord amended her application at the hearing and stated that she was seeking a total of \$2865.00 in rent.

Issue 1: Rent Owning - \$2865.00

Relevant Submissions

The Landlords' Position

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant, commencing 01 July 2019, and a copy of that executed lease was submitted with her application (█ #1). The agreed rent was set at \$955.00 per month and it is acknowledged in the agreement that the tenant paid a security deposit of \$477.50.
8. The landlord submitted a copy of her rent records at the hearing (█ #2) showing the payments she had received from the tenant since she moved in. According to these records, the tenant has paid no rent for the months of October, November and December 2019.
9. The landlord is seeking an order for a payment of rent in the amount of \$2865.00 for those 3 months (3 months x \$955.00 per month).

The Tenant's Position

10. The tenant did not dispute the landlord's claim and she acknowledged that she had not paid rent for the last 3 months.
11. The tenant stated that although she is currently employed, she has had to take some time off of work over the past couple of months as she had to have surgery as a result of thyroid cancer.
12. She stated that she had no sick days remaining at work and she was not paid for the time she had to take off. She also stated that she was ineligible for an employment insurance sick benefit.

Analysis

13. It is not disputed that the tenant has not paid rent for the months of October, November and December 2019. As the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
14. I calculate the rent owing to be \$2004.20 (\$1910.00 for the period ending 30 November 2019 (\$955.00 per month x 2 months) and \$94.20 for December 2019 (\$955.00 per month x 12 months = \$11,460.00 per year ÷ 365 days = \$31.40 per day x 3 days = \$94.20)).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$2004.20.
16. The tenant shall pay a daily rate of rent in the amount of \$31.40, beginning 04 December 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late fees - \$75.00, NSF fees - \$50.00

Relevant Submissions

The Landlords' Position

15. The landlord has assessed late fees in the amount of \$75.00.

Analysis

16. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

17. The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

18. As the tenant has been in arrears since 02 October 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

19. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

19. With her application, the landlord submitted a copy of a termination notice (█ #3) which she stated she had posted to the tenant's door on 11 October 2019.
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 25 October 2019.
21. The landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

22. The tenant acknowledged receiving the termination notice

Analysis

23. 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.

24. According to the testimony and evidence submitted at the hearing, on 11 October 2019 the tenant was in arrears in the amount of \$955.00 and had been in arrears since the beginning of that month. No payments have been made since that date and since then the rent for November and December 2019 has come due.
25. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. 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 4: Hearing Expenses

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

Issue 5: Security Deposit

29. The landlord testified that the tenant paid a security deposit of \$477.50 on 28 June 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.


Summary of Decision

30. The landlord is entitled to the following:
 - A payment of \$1621.70, determined as follows
 - a) Rent Owing\$2004.20
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) **LESS: Security Deposit..... (\$477.50)**
 - e) Total Owing to Landlord\$1621.70
 - A payment of a daily rate of rent in the amount of \$31.40, beginning 04 December 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.

03 December 2019

Date



John R. Cook
Residential Tenancies Tribunal