

Residential Tenancies Tribunal

Decision 20-0006-04

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 10:00 am on 09 March 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, did not participate in the hearing but was represented by [REDACTED]. (*Affirmed*)
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$1000.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$700.00 collected on the tenancy on or about 29 August 2019. The landlord issued a termination notice dated 07 February for the intended termination date of 13 February 2020 under Section 19 of the *Residential Tenancies Act, 2018*.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The tenant, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, 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 he/she has been properly served*.

The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **26 February 2020** by serving the documents to the tenant via email at: [REDACTED] and attaching verification of the email on the application to rent along with a copy of the sent email. The email was sent at 5:52pm on 25 February 2020 thereby making the service date as 26 February 2020. The tenant has had **11 days** to provide a response.

A phone call was placed to the tenant at [REDACTED] and there was no answer. A message was left for the tenant at this number.

7. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.
8. The landlord amended the claim at the onset of the hearing to increase the amount of rent being claimed to \$2000.00 reflecting rent that has come due since the filing of the claim for the month of March 2020.
9. The landlord called a witness [REDACTED] ([REDACTED]) as a witness in this matter (Affirmed).

Issues before the Tribunal

10. The landlords are seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$2000.00**
 - c) Late Fees
 - d) Hearing Expenses

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are Sections 19, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owing - \$2000.00

Relevant Submissions

Landlord Position

13. The landlord stated that the parties entered into a verbal rental agreement commencing 01 September 2019. The agreed rent was set at \$1000.00 per month and due on the 1st day of each month with a security deposit in the amount of \$700.00 collected on or about 29 August 2019. The landlord issued a termination notice (**Exhibit L # 2**) for the intended date of 13 February 2020. The landlord further submitted into evidence a copy of the rental records (**Exhibit L # 1**). The landlord stated as of the hearing date 09 March 2020 rent remains outstanding.

Analysis

14. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
15. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Records are clear that rent is owing up to and including 29 February 2020 in the amount of **\$1000.00**. Rent for March 2020 can only be awarded up to and including the hearing date (09 March 2020) and on a daily rate of rent beyond the hearing date calculated as ($\$1000.00 \times 12 \text{ months} = \$12,000.00 \div 366 \text{ days} = \$32.79 \text{ per day} \times 9 \text{ days} = \295.11). Rent for March 1 – 9, 2020 then is **\$295.11**.
16. Respective of the rent for the remainder of the month of March 2020 and beyond, the landlord is further awarded a daily rate of rent in the amount of \$32.79 commencing on 10 March 2020 and continuing until the day the landlord obtains vacant possession of the property.

Decision

17. The landlord's total claim for rent succeeds as follows:

- a) Rent owing up to 29 February 2020 \$1000.00
- b) Rent owing for March 1 – 9, 2020 295.11
- c) Total Arrears **\$1295.11**

d) The landlord is awarded a daily rate of rent in the amount of **\$32.79** beginning on 10 March 2020 and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

- 18. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
- 19. The landlord testified that the tenant was in arrears for the months of February and March 2020. The landlord indicated that she is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

- 20. Established by undisputed fact above, the tenant was in arrears for the period 01 February 2020 to 09 March 2020. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
- 21. The issue of rental arrears has been determined above confirming that the tenant owed rent to the landlord for the period 01 February 2020 to 09 March 2020 and therefore would be liable for a late fee. Any calculated amount of a late fee would exceed the maximum allowable under regulation (\$75.00). As such, the landlord's claim for late fees succeeds in the amount of \$75.00

Decision

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

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

23. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
24. The landlord testified that the tenant is in rental arrears and indicated that a notice to terminate was issued under Section 24 of *the Act* (**Exhibit L # 2**) to terminate the tenancy on 13 February 2020. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 07 February 2020.
25. The landlord testified that the tenant has created an unreasonable amount of noise and disturbance within the building thereby interfering with the peaceful enjoyment and reasonable privacy of the adjacent tenant. The landlord testified that she has received complaints from the tenant over and over about the noise to the point where they had to move the tenant whose peaceful enjoyment was interfered with, to another rental property.
26. The landlord called a witness to verify the happenings in the complex. The landlord called [REDACTED] who explained the both she and her 19 year old daughter did not feel safe in the property as a result of the respondent. [REDACTED] is the former adjacent tenant who has since moved. The witness indicated that *there was an obvious drug use ongoing at the property as a result of the odors and the constant stream of traffic to the unit. She stated that there were constant parties which created loud noises at all hours in the night and keeping her awake. The tenant stated that on numerous occasions, there were shady people banging on her apartment door looking for the respondent. The witness further stated that the respondent would leave his skidoo running at early hours in the morning and again disturbing both her and her daughters sleep. The witness stated that as a result of the constant and ongoing disturbances, she was forced to move to another unit for their safety and security.*
27. The landlord indicated that as of the hearing date (09 March 2020), the tenant remains in the unit. The landlord further testified that to the best of her knowledge, there are 2 adults living in the unit.

Analysis

28. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19 (4) and 34 as well as the service requirements identified in section 35.
29. Further to the technical requirements of the notice, the issue of merit also has to be determined and will be covered in the following paragraphs.
30. The landlord has claimed that the respondent has interfered with the peaceful enjoyment and reasonable privacy of an adjacent tenant which has forced this tenant to move from their rented premises. The landlord has followed up with the tenant as a witness at the hearing who clearly explained that the respondent was engaging in behaviors, creating noise at early hours in the morning in the rental complex. She was fearful of the respondent and the company that frequented his apartment as guests. I find her testimony to be credible and reliable as the fear echoed through her voice at the hearing.
31. Based on the totality of the evidence and on the balance of probabilities, I accept the evidence of the landlord and find that the respondent has interfered with the peaceful enjoyment and reasonable privacy of the adjacent tenant in the rental complex thereby violating the *Residential Tenancies Act, 2018*.
32. Section 24 (1)(b) requires that when a contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may terminate the tenancy and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 07 February 2020 with a termination date of 13 February 2020. As established above, the tenant has interfered with the peaceful enjoyment and reasonable privacy of an adjacent tenant which is in contravention of *The Act*. I further find that as the date of termination identified on the notice is at least 5 clear days between the date the notice was issued and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 24 (2).

33. Sections 19 (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find it all these criteria have been met.

section 24 (2)

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.*

section 34

A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;*
- (b) contain the name and address of the recipient;*
- (c) identify the residential premises for which the notice is given; and*
- (d) state the section of this Act under which the notice is given.*

34. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under section 35.
35. According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession of the property along with an order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

36. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 4: Hearing Expenses

Landlord Position

37. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████████) (**Exhibit L # 3**). The landlord is seeking this cost.

Analysis

38. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

39. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

40. The landlord is entitled to the following:

- | | | |
|----|---|------------------|
| a) | Rent Owing (up to and including 09 March 2020)..... | \$1295.11 |
| b) | Late Fees..... | 75.00 |
| c) | Hearing Expenses | <u>\$20.00</u> |
| d) | Total owing to Landlord | \$1390.11 |
| e) | Vacant Possession of the Rented Premises | |
| f) | A daily rate of rent in the amount of \$32.79 beginning 10 March 2020. | |
| g) | An order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order. | |

13 March 2020

Date

Michael Greene
Residential Tenancies Tribunal