

Residential Tenancies Tribunal

Decision 20-0011-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:00 am on 11 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, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing (*Affirmed*).
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$400.00 per month and due on the 15th of each month. The landlord issued a termination notice under Section 19 on 30 January 2020 for the intended termination date of 10 February 2020. There was no security deposit collected on this tenancy.
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 landlord amended the application at the hearing to add rent in the amount of \$400.00 that has come due since the filing of the application up to and including 14 March 2020.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Rent Owing
 - b) Vacant Possession (section 19)
 - c) Damages **(\$391.00)**
 - d) Hearing Expenses

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. Also relevant and considered in this case are Sections 24, 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 - \$800.00

Relevant Submissions

Landlord Position

10. The landlord stated that they had entered into a verbal rental agreement with the tenant, commencing 09 November 2018. The agreed rent was set at \$400.00 per month and due on the 15th day of each month with no security deposit collected on this tenancy. The landlord issued a termination notice (**Exhibit L # 3**) on 30 January 2020 for the intended date of 10 February 2020 (Section 19). The landlord stated that rent was outstanding in the amount of \$800.00 for the period ending 14 March 2020 and stated as of the hearing date 11 March 2020 rent remains outstanding.

Tenant Position

- 11. The tenant acknowledged and accepted that rent as claimed by the landlord has not been paid.

Analysis

- 12. I have reviewed the testimony and evidence of the landlord and tenant 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.
- 13. With respect to the arrears being claimed, I agree with both the landlord and tenant 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. Rent for the period ending 14 February 2020 is outstanding in the amount of **\$400.00**. Rent for the month commencing 15 February 2020 can only be awarded up to and including the hearing date (11 March 2020) and is calculated as $(\$400.00 \times 12 \text{ months} = \$4800.00 \div 366 \text{ days} = \$13.11 \text{ per day} \times 26 \text{ days} = \$340.86)$. Rent for 15 February 2020 to 11 March 2020 then is **\$340.86**.
- 14. The landlord is further awarded a daily rate of rent in the amount of **\$13.11** commencing on 12 March 2020 and continuing until the day the landlord obtains vacant possession of the property.

Decision

- 15. The landlord’s total claim for rent succeeds as follows:
 - a) Rent owing up to 14 February 2020 \$400.00
 - b) Rent owing for February 15 – March 11, 2020 340.86
 - c) Total arrears..... **\$740.86**
 - d) The landlord is awarded a daily rate of rent in the amount of **\$13.11** beginning on 12 March 2020 and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Vacant Possession of the Rented Premises

Landlord Position

- 16. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
- 17. The landlord testified that the tenant has failed to pay rent as required by the

rental agreement and has accumulated rental arrears. The landlord submitted a copy of the termination notice (**Exhibit L # 3**) issued to the tenant on 30 January 2020 for the intended termination date of 10 February 2020, thereby terminating the tenancy effective 10 February 2020.

18. The tenant has acknowledged that rent has not been paid as claimed by the landlord and there is 1 adult and 1 child aged 14 years living in the unit.
19. The landlord testified that the notice to terminate was served to the tenant on 30 January 2020 by personal service. The landlord indicated that as of the hearing date (11 March 2020), the tenant remains in the unit.

Analysis

20. 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.
21. The issue of rental arrears has been established above. There is no doubt that the tenant owes rent to the landlord and has failed to pay all the arrears by the ending date of the termination notice (10 February 2020).
22. The landlord issued a termination notice under Section 19 of the *Residential Tenancies Act* by personal service. Section 19 requires that the landlord provide notice to the tenant that the rental agreement is terminated and the tenant is required to vacate the property on a specified date not less than 10 days after the notice has been served. I accept the evidence of the landlord and find that the tenant failed to make the required rent payments thereby accumulating rental arrears as calculated.
23. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 30 January 2020 with a termination date of 10 February 2020. As established above, the tenant has outstanding rent beyond the date of termination. I further find that as the date of termination identified on the notice is not less than 10 days after the notice has been served and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of Section 19(4). 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 19 (4)

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.*
24. The landlord testified that she served the termination notice by personal service which is a permitted method of service identified under Section 35.
25. 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

26. 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 3: Compensation for Damages - \$391.00

Relevant Submissions

Landlord Position

27. The landlord is claiming for the replacement of an exterior door to the property. The landlord submitted into evidence photos of the door (**Exhibit L # 4**) and stated that the window in the door was broken during the tenancy. The landlord further submitted into evidence an invoice from Notre Dame Agencies (**Exhibit L # 5**) in the amount of **\$391.00** for the purchase of a new door.
28. The landlord testified that the door was an outswing door and was purchased and installed in September 2019.

Tenant Position

29. The tenant disputes this portion of the landlord's claim stating that the door was not correctly installed and as a result, the door blew open and the door struck the light shade that was hanging from the side of the door. The tenant referred to the landlord's photos submitted to demonstrate that there was an exterior light hanging. The tenant testified that the door wasn't latching correctly and that she advised the landlord of this issue.

Analysis

30. It is clear from the hearing that this landlord and tenant relationship is strained at best. However, this does not absolve both parties from their obligations under the rental contract.
31. The landlord is seeking the cost of replacing a door to a rented premises as the result of a broken window in that door. I must first point out here that the replacement of the entire door would not be necessary if it is only the window that is broke. These common "9 light" glass inserts are readily available throughout the Province at a fraction of the cost of a new door. However, the landlord is required to first establish that the tenant is liable for the damage before an award is granted.
32. The tenant pointed that the door was an out swing door and that there was an exterior light shade hanging from the property. The tenant testified that the landlord was made aware of the light and failed to repair the light. The landlord acknowledged that the light was hanging and that she hadn't got around to fixing it. In examining the photos of the landlord, one can clearly see that the hole in the window exactly lines up with the hanging light. It is plausible that the door could have blown open if indeed it wasn't latching properly and hit the light shade. Had this light been repaired, the damage may not have happened.
33. In any regard, the landlord has not established that the tenant through a willful or negligent action caused the damage as claimed. In this light, the landlord's claim for a door replacement fails.

Decision

34. The landlord's claim for damages fails.

Issue 3: Hearing Expenses

Landlord Position

35. 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 # 6**). The landlord paid \$17.11 to Canada Post for the service of documents by registered mail. The landlord is seeking this cost.

Analysis

36. 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

37. The tenant shall pay the reasonable expenses of the landlord in the amount of \$37.11.

Summary of Decision

38. The landlord is entitled to the following:

- a) Rent Owning (up to and including 11 March 2020).....\$740.86
- b) Hearing Expenses \$37.11
- c) **Total owing to Landlord****\$777.97**

- d) Vacant Possession of the Rented Premises.
- e) A daily rate of rent in the amount of **\$13.11** beginning 12 March 2020.
- f) 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.

01 April 2020

Date



Michael Greene
Residential Tenancies Tribunal