

Residential Tenancies Tribunal

Decision 20-0011-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **13 May 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as landlord, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. (*Affirmed*).
4. In a proceeding under the *Residential Tenancies Act*, 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

5. The application was AMENDED at the hearing to decrease rent claimed as a result of a payment made by the tenant on May 1, 2020 in the amount of \$275.00. The new amount outstanding is \$825.00.
6. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **02 May 2020** by serving the original documents to the tenant by email: [REDACTED].

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Payment of rent owing **\$825.00**;
 - b) Payment of late fees
 - c) Vacant possession of the rented premises;
 - 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 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 Owning - \$825.00

Relevant Submissions

Landlord Position

10. The landlord stated that she had entered into a verbal monthly rental agreement with the tenant with agreed rent set at \$550.00 per month and due on the 1st day of each month. There was no security deposit collected on this tenancy. The landlord demonstrated the arrears with rental records (**Exhibit L # 2**) as total rent outstanding is \$825.00 up to and including 31 May 2020. The landlord stated as of the hearing date 13 May 2020 the tenant remained in the unit and rent is outstanding.

Tenant Position

11. The tenant stated that she fell on some hard times during the pandemic and the loss of a loved one. The tenant acknowledged the arrears as claimed by the landlord.

Analysis

12. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there are 2 issues here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant; (ii) is this claim

subject to the Amendments enacted by the Government of NL and Labrador regarding the COVID-19 Pandemic, Chapter C-37.03.

13. 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 written rental agreement established when the tenancy began. Records are clear that rent for the period ending 30 April has not been paid leaving a balance of **\$550.00**. Further, rent for May 1 – 13, 2020 can only be calculated up to and including the day of the hearing (13 May 2020). That calculation is ($\$550.00 \times 12 \text{ months} = \$6600.00 \div 366 \text{ days} = \$18.03 \text{ per day} \times 13 \text{ days} = \234.39). Rent for May 1 – 13, 2020 is **\$234.39**.
14. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$18.03** beginning on **14 May 2020** and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

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

a) Rent owing up to 30 April 2020	\$550.00
b) Rent owing for May 1 – 13, 2020	<u>234.39</u>
c) Total Arrears	\$784.39
d) LESS: Tenant Payment 01 May 2020	<u>(\$275.00)</u>
e) Total due to Landlord.....	<u>\$509.39</u>
f) A daily rate beginning 14 May 2020	\$18.03

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

16. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
17. The landlord testified that the tenant has been in arrears on an ongoing basis since January 2020. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

18. Established by undisputed fact above, the tenant was in arrears since January 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.
19. Any calculated amount of late fees would exceed the maximum allowable.
20. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

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

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

22. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
23. The landlord testified that when the tenant fell in arrears, she issued a termination notice under Section 19 of the Act (**Exhibit L # 4**) to terminate the tenancy on 02 May 2020. She testified that the notice was served personally and as of the hearing date (13 May 2020), the tenant remained in the unit. The landlord testified that there is 1 adult living in the unit.

Analysis

24. Established by undisputed statement of fact above, the rental agreement is a monthly tenancy. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 19. (1)(b), (4) and 34 as well as the service requirements identified in Section 35.
25. In addition, the determination of an order of possession is subject to the amendments enacted by the Province (Chapter C-37.03 regarding the amendments to the *Residential Tenancies Act, 2018*).
26. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.
27. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenant a termination notice to vacate the property not less

than 10 days after the notice is served on the tenant. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 4**), I find the notice was served on 22 April 2020 with a termination date of 02 May 2020. As established above and undisputed by the tenant, rent had been in arrears since January 2020. As rent had been in arrears for 30 plus days, I find this is well beyond the 5 day requirement set out in the Act. I further find that as the date of termination identified on the notice is 10 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 19. (1)(b).

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.*

28. Sections 19. (4) and 34 above identify the technical requirements of the termination notice. On examination of the termination notice, I find it all these criteria have been met.
29. As it has been stated under oath by the tenant that she fell on hard times as a result of the pandemic and at the same time lost a loved one. The amendments to the Residential Tenancies Act, 2018 as a result of the COVID-19 Pandemic, directly apply in this situation. It does not alter that fact that arrears are owed, but does adjust for an extension to the termination date on the notice issued by the landlord. The landlord's notice terminates the tenancy on 02 May 2020 under section 19 (Non-Payment of Rent). The amendment adjusts this date for 30 days to 01 June 2020 and reads:

4. Section 19 of the *Residential Tenancies Act, 2018* is amended by adding immediately after subsection (4) the following:

(5) Notwithstanding subsection (1), where a tenant suffers a loss of income due to loss of employment or a reduction in work hours as a result of the Public Health Emergency declared in the province on March 18, 2020, the period in which the tenant is required to vacate a residential premises under subsection (1) is extended for a period of not less than 30 days after the notice is served on the tenant.

(6) A tenant referred to in subsection (5) shall provide to the landlord proof of loss of income in the form of

(a) written or electronic documentation from the tenant's employer confirming the loss of employment or reduction in work hours; or

(b) a statutory declaration of the tenant.

(7) Notwithstanding subsection (5), the Lieutenant-Governor in Council may, by order, extend the period referred to in subsection (5).

(8) An order made under subsection (7) is subordinate legislation for the purposes of the *Statutes and Subordinate Legislation Act*.

(9) The Crown is not liable for damages caused to a person as a result of a time period extended under the authority of subsection (5) or (7).

30. 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 to the date extended to 01 June 2020 as a result of the COVID-19 amendments, 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

31. The landlord's claim for vacant possession succeeds on the specified date of 01 June 2020. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Issue 3: Hearing Expenses

Landlord Position

32. 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 a fee in the amount of \$40.00 to have a Commissioner for Oaths (**Exhibit L # 5**) witness her affidavit. The landlord is seeking this cost.

Analysis

33. 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

34. The tenant shall pay the reasonable expenses of the landlord in the amount of \$60.00.

Summary of Decision

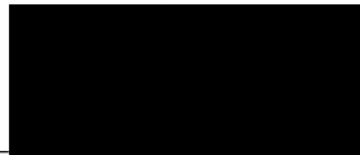
35. The landlord is entitled to the following:

- a) Rent Owing\$509.39
- b) Late Fees75.00
- c) Hearing Expenses \$60.00
- d) **Total Owing to the Landlord****\$644.39**

- e) Vacant Possession of the Rented Premises on a specified date of 01 June 2020.
- f) A daily rate of rent set at **\$18.03** beginning **14 May 2020** and continuing until the day the landlord obtains vacant possession of the Rented Premises.
- g) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

26 May 2020

Date



Michael Greene
Residential Tenancies Tribunal