

## Residential Tenancies Tribunal

Decision 20-0056-01

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **9:45 am** on **25 November 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. The landlord was represented by [REDACTED] - Partner. (**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 \$545.00 per month and due on the 1<sup>st</sup> of each month. It was stated that a security deposit in the amount of \$200.00 was collected on this tenancy on or about 30 September 2020. The landlord issued a termination notice dated 18 September 2020 for the intended termination date of 30 September 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 landlord amended the application during the hearing to remove elements of the claim (Compensation for Damages). At the landlord's request this claim for damages was removed.
7. The landlord amended the application to adjust the amount of rent owing to \$672.00 up to 30 November 2020.
8. The tribunal further removed a charge for a preparation fee (other) from the claim as this is not an allowable expense under regulations and is seen as a cost of doing business for each landlord regardless if they are a sole proprietor, partnership or a limited or incorporated company.
9. It was further noticed by the tribunal on review of the file that a second tenant was mentioned in letters submitted by the landlord. There was no indication on the application of this second tenant being named. The landlord explained that the second tenant vacated the property in April 2020 and is no longer considered a tenant at the property.
10. The landlord did not claim any hearing expenses for this claim.
11. The landlord stated they were seeking vacant possession based on the termination notice issued under section 19 for the non payment of rent only.
12. 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 **21 October 2020** by serving the application for dispute resolution document to the tenant by registered mail ([REDACTED]) to the rental unit address. The tenant has had **34 days** to provide a response.

There was no contact information on file to allow for a courtesy call to the tenant in advance of starting the hearing.

As the tenant was properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

## Issues before the Tribunal

13. The landlord is seeking the following:
- a) Vacant possession of the rented premises
  - b) Payment of rent owing **\$672.00**
  - c) Late Fees **\$75.00**
  - d) Utilities **\$537.50**

## Legislation and Policy

14. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
15. 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 - \$672.00

### Relevant Submissions

#### Landlord Position

16. The landlord stated that he had entered into a verbal rental agreement with the tenant commencing 16 March 2020. The agreed rent is set at \$545.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$200.00 collected on this tenancy on or about 30 September 2020. The landlord issued a termination notice (**Exhibit L # 3**) on 18 September 2020 for the intended date of 30 September 2020 (Section 19). The landlord stated that rent was outstanding in the amount of **\$670.00 (Exhibit L # 3)** for the period ending 30 November 2020 and stated as of the hearing date 25 November 2020 rent remains outstanding.

### Analysis

17. 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.
18. With respect to the arrears being claimed, I agree with the landlord that rent is owed for the period ending 31 October 2020. 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 for the period ending 31 October 2020 is outstanding in the amount of **\$125.00**.

19. Rent for the Month of November 2020 can only be awarded up to and including the hearing date (25 November 2020) and is calculated as ( $\$545.00 \times 12 \text{ months} = \$6540.00 \div 366 \text{ days} = \$17.87 \text{ per day} \times 25 \text{ days} = \$446.75$ ). The calculated rent due for November 1 - 25, 2020 then is **\$446.75**.
20. The landlord is further awarded a daily rate of rent in the amount of **\$17.87** commencing on **26 November 2020** and continuing until the day the landlord obtains vacant possession of the property.

## Decision

21. The landlord's total claim for rent succeeds as follows:
  - a) Rent owing up to 31 October 2020..... \$125.00
  - b) Rent owing for November 1 - 25, 2020 ..... 446.75
  - c) Total Owing to Landlord ..... **\$571.75**
  - d) The landlord is awarded a daily rate of rent in the amount of **\$17.87** beginning on **26 November 2020** and continuing until the day the landlord obtains vacant possession of the property.

## Issue 2: Late Fees - \$75.00

### Landlord Position

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

## Analysis

24. Established by undisputed fact above, the tenant was in arrears since 01 September 2020. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
25. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

## Decision

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

## Issue 3: Utilities - \$537.50

### Relevant Submissions

#### Landlord Position

27. The landlord stated that they had received three invoices from NL Power (**Exhibit L # 3**) in the amount of **\$537.50**. The landlord stated that the tenant failed to have the power changed into her name at the beginning of the tenancy and ran up the bill in the landlord's name. The landlord testified that this cost should be the responsibility of the tenant and is claiming this charge for the utilities.

### Analysis

28. 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 utilities that is being claimed by the landlord actually owed by the tenant.
29. With respect to the utilities being claimed, I agree with the landlord that this charge is the responsibility of the tenant. Utilities are required to be paid by the tenant for the period of use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. I accept the evidence and testimony of the landlord that the tenant was required to pay her own utilities. Failing to change the electrical account is contrary to the verbal rental contract and I find that based on the records provided, the tenant owes utilities in the amount of **\$537.50** including forfeited discounts and interest charged by NL Power.

## Decision

30. The landlord's claim for utilities succeeds in the amount of \$537.50.

## Issue 4: Vacant Possession of the Rented Premises

### Landlord Position

31. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
32. The landlord testified that the tenant has failed to pay rent as required by the rental agreement and has accumulated excessive rental arrears. The landlord submitted a copy of the termination notice (**Exhibit L # 4**) issued to the tenant on 18 September 2020 for the intended termination date of 30 September 2020 thereby terminating the tenancy effective 30 September 2020. On the termination date the tenant was not in arrears. The landlord indicated that as of the hearing date (25 November 2020), the tenant remained in the unit.

### **Analysis**

33. 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.
34. The issue of rental arrears has been established above. There is no doubt that the tenant owes rent to the landlord. However, by the ending date of the termination notice (30 September 2020), the tenant was actually in a credit balance of \$2.00 as extracted by the landlord records of rent owing.
35. The landlord issued a termination notice under section 19 of the *Residential Tenancies Act*. 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. The evidence is clear from the rental ledger submitted that the tenant was not in arrears at the termination date as set out on the termination notice issued under section 19. However, the tenant as indicated above do owe to the landlord an amount of Utilities that were not paid from the months of March, April and May 2020 which would have been carried forward. The definition of Rent is defined as follows:

Definitions:

2 (g) "rent" means money or other value paid, or required to be paid under a rental agreement, by a tenant to a landlord before or during the use or occupancy of a residential premises for the use or occupation of the residential premises and includes

(ii) an amount payable for the cost of utilities,

36. As the tenant was owing utilities which is by definition also rent, then the tenant was in arrears at the date of termination (30 September 2020) and thus the termination notice would not be considered void.

*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.*

37. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 4**), I find the notice was served on 18 September 2020 with a termination date of 30 September 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.
38. As identified above, the landlord testified that he served the termination notice by personal service which is a permitted method of service identified under section 35.

39. 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

40. 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.

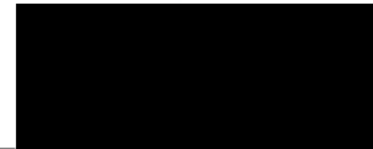
### Summary of Decision

41. The landlord is entitled to the following:

- a) Rent Owning (up to and including 25 November 2020) .....\$571.75
- b) Late Fees.....75.00
- c) Utilities .....537.50
- d) **Total Owning to Landlord.....\$1184.25**
- e) Vacant Possession of the Rented Premises.
- f) A daily rate of rent in the amount of **\$17.87** beginning **26 November 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.

26 November 2020

**Date**



**Michael Greene**  
**Residential Tenancies Tribunal**