

Residential Tenancies Tribunal

Decision 20-0067-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm** on **12 January 2021** 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 the tenant, participated in the hearing (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the landlord, did not participate in the hearing but was represented by [REDACTED] – Property Manager. (*Affirmed*).
4. The details of the tenancy was a written monthly tenancy which commenced on 01 January 2020 with rent set at \$900.00 per month and no security deposit collected on the tenancy. The landlord issued two termination notices as follows:
 - a. Section 18 issued on 23 November 2020 for 28 February 2021
 - b. Section 19 issued on 17 December 2020 for 30 December 2020
5. 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

6. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **29 December 2020** by serving the original documents to the tenant personally at the rental address.

7. The affidavit submitted by the tenant shows that the landlord was served with the notice of this hearing on the **26 November 2020** by serving the original documents to the landlord by serving the solicitor for the landlord at the email address: [REDACTED] and providing a copy of the email sent. The landlord representative indicated he did receive a copy of the claim documents from the solicitor as served.
8. The landlord amended the claim at the onset of the hearing to add rent that has come due for January 2021. The new amount of rent being claimed is \$1850.00

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Payment of rent owing **\$1850.00**;
 - b) Payment of late fees **\$75.00**
 - c) Vacant possession of the rented premises;
10. The tenant is seeking the following:
 - d) Rebate of rent **\$1800.00**;
 - e) Validity of the termination notice

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 Owning/Rebate of Rent - \$1850.00/\$1800.00

Relevant Submissions

Landlord Position (Rent Owning)

13. The landlord stated that they entered into a written monthly rental agreement with the agreed rent set at \$900.00 per month (which is adjusted for internet usage by the tenant) and due on the 1st day of each month. There was no security deposit collected on this tenancy.

14. The landlord testified that the tenant has failed to pay rent as follows:
 - a. November 2020 - \$300.00
 - b. December 2020 - \$650.00
 - c. January 2021 - \$900.00
 - d. Total Due - \$1850.00
15. The landlord submitted into evidence a copy of the rental records (**Exhibit L # 1**) showing a total rent outstanding in the amount of \$1850.00 up to and including 31 January 2021. The landlord stated as of the hearing date 12 January 2021 the tenant remained in the unit and rent remains outstanding.

Tenant Position (Rent Owing)

16. The tenant testified that she does owe the rent that the landlord has claimed above with one exception. The tenant added that she actually owes \$400.00 for November 2020 and not \$300.00 as claimed by the landlord.
17. The tenant testified that she simply has come on some hard luck financially and chose to spend her money that she had on Christmas and not on rent. The tenant stated that she lost her Job in November and hasn't worked since.
18. The tenant further added that she would consider the section notice issued by the landlord as valid.

Tenant Position (Rebate of Rent)

19. The tenant testified that in March 2020 she noticed a leak in the property in a bedroom. The tenant testified that she advised that landlord and indicated that the landlord attended the property to check the problem out. She indicated that it seemed that the problem escalated and took until October to complete the repair.
20. The tenant is claiming the loss of use of the property (claiming 1/3 loss of use) for a total of \$1800.00 compensation. The tenant/landlord advised that the property was 900 ft² and the bedroom in question was approximately 72 ft².
21. The tenant did not complete any sort of formal request for repairs and submit it to the landlord to force the completion of the repairs.

Landlord Position (Rebate of Rent)

22. The landlord stated that the property is approximately 900 ft² and the room in question is 72 ft².

23. The landlord disputes the claim of the landlord and indicated that the tenant did not lose use of the property. The repairs were made and the tenant has simply not paid rent.

Analysis

24. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there are 2 issues here that need to be addressed:
- a. (i) is the rent that is being claimed by the landlord actually owed by the tenant, and;
 - b. (ii) was the tenant negatively affected by the loss of use of a specific portion of the property which would require a rebate of rent paid.
25. The question on, is there rent arrears, is elementary, as the tenant has acknowledged the arrears and in fact has acknowledged that she owes more than what the landlord is claiming. As such, I find that the tenant does owe rent as calculated below based on the claim of the landlord and the records provided into evidence.
26. It should be noted that as a matter of basic book keeping, arrears are carried forward and with any payment made by the tenant, the oldest arrears are paid first.
27. Records are clear that rent for the period ending 31 December 2020 has not been paid leaving a balance of **\$950.00**. Further, rent for January 2021 can only be calculated up to and including the day of the hearing (12 January 2021). That calculation is ($\$900.00 \times 12 \text{ months} = \$10800.00 \div 365 \text{ days} = \$29.59 \text{ per day} \times 12 \text{ days} = \355.08). Rent for January 1 – 12, 2021 is **\$355.08**.
28. The landlord is also entitled to a daily rate of rent in the amount of **\$29.59** commencing **13 January 2021** until the day the landlord obtains vacant possession.
29. The total calculated rental arrears is:
- | | |
|--|-------------------------|
| a. Rent Owing (up to 31 December 2020) | \$950.00 |
| b. Rent Owing (January 1 – 12, 2021) | <u>355.08</u> |
| c. Total Rent Owing | <u>\$1305.08</u> |
30. Further to the tenant's claim for a rebate of rent paid, the tenant has presented a version of events that there was a leak in the property that rendered a bedroom of her property useless and not available for the period of March 2020 to October 2020.
31. The tenant testified that she is seeking \$1800.00 as compensation for the loss of use of the bedroom over the period of April – September 2020 claiming that she lost use of 1/3 of the property.

32. The tenant testified that she did not file any formal notification for repairs to the landlord. She was not aware of the square footage of the property and the landlord indicated that the property was approximately 900 ft² and the bedroom was 72 ft² (9 X 8). As a matter of a quick calculation, the bedroom would be approximately 8% of the total square footage and not 1/3 as claimed by the tenant.
33. The tenant referred to a series of communications (**Exhibit T #1**) between the property manager and herself concerning the leak in the bedroom. The conversation was from mid May 2020 to approximately mid June 2020. The tenant referenced that the property manager advised to not use the bedroom.
34. The landlord claims that the tenant had use of the property and the bedroom. He indicated that there was a leak and they were addressing the problem.
35. In this portion of the claim, it is the burden of the tenant applicant to prove the claim beyond the balance of probabilities. It is clear that both parties agree that there was a leak in the property that created some issues of rot and apparently some mold (described by the property manager as black stuff). It is not clear if the tenant lost use of the bedroom area but it is clear that there was certainly an inconvenience to the tenant as a result of the leak. It does appear that the repair time was of a long duration (all summer) for whatever reason and this has certainly created the inconvenience.
36. I don't accept that a complete loss of use of the bedroom was happening. I do accept that the tenant was inconvenienced. In assessing compensation for this the maximum consideration that could be looked at would be 8% of the total rent paid or (\$432.00). This would be for the total loss of use of the bedroom.
37. I find the tenant is entitled to compensation for inconvenience in the amount of \$216.00 representing 50% of the maximum claim noted in paragraph 36 above for the inconvenience of a leak in the bedroom of the property being rented.

Decision

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

a) Rent owing up to 31 December 2020	\$950.00
b) Rent owing for January 1 - 12, 2021	355.08
c) Total Arrears	\$1305.08
d) LESS: Compensation for Inconvenience.....	<u>(\$216.00)</u>
e) Total owing to Landlord.....	<u>\$1089.08</u>
f) A daily rate beginning 13 January 2021	\$29.59

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

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

Analysis

41. Established by undisputed fact above, the tenant was in arrears since November 2019. 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.
42. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

43. 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

44. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
45. The landlord testified that when the tenant fell in arrears, he issued a termination notice under Section 19 of the Act (**Exhibit L # 4**) to terminate the tenancy on 30 December 2020. She testified that the notice was served to the tenant and as of the hearing date (12 January 2021), the tenant remained in the unit. The landlord testified that there is 1 adult and 3 children aged 11, 10 and 1 year living in the unit.

Analysis

46. Established by undisputed statement of fact above, the rental agreement is a written 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.
47. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.
48. 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 17 December 2020 with a termination date of 30 December 2020. As established above and undisputed by the tenant, rent had been in arrears as of the termination date and the last time the tenant was not in arrears, prior to the notice being issued, was 31 October 2020. 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).
49. Sections 19. (4) and 34 below identify the technical requirements of the termination notice. 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.*

50. As identified above, the landlord testified that the termination notice was served by personal service which is a permitted method of service identified under Section 35.
51. 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

52. The landlord’s claim for vacant possession succeeds. The landlord is further awarded cost associated with the enforcement of the Possession Order by the High Sheriff of NL.

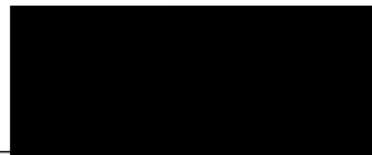
Summary of Decision

53. The landlord is entitled to the following:

- a) Rent (up to and including 12 January 2021)\$1089.08
- b) Late Fees.....75.00
- d) **Total owing to the landlord\$1164.08**
- e) Vacant Possession of the Rented Premises
- f) A daily rate of rent set at **\$29.59** beginning **13 January 2021** 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.

18 January 2021

Date



Michael Greene
Residential Tenancies Tribunal