

Residential Tenancies Tribunal

Decision 20-0070-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 am on 26 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, was represented at the hearing by [REDACTED] (“[REDACTED]”) of [REDACTED]. A letter of authorization is on file.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, participated by telephone. His co-respondent, [REDACTED], did not participate in the proceedings.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$4000.00, and
 - b. An order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. ■ amended the application at the hearing and stated that the landlord was now seeking a total payment of rent in the amount of \$6000.00.

Issue 1: Rent Owing - \$6000.00

Relevant Submissions

The Landlord's Position

8. The landlord and tenants had entered into a 1-year, fixed-term rental agreement, commencing 07 January 20, and a copy of that lease was submitted with the landlord's application (■ #1). The agreed rent was set at \$2000.00, due on the 7th day of each month, and it is also acknowledged in the lease that the tenants had paid a security deposit of \$1500.00.
9. The landlord also submitted rent records with her application (■ #2). According to those records, rent was paid and up-to-date for the period ending 06 December 2019. No payments have been made since.
10. The landlord is seeking an order for a payment of rent for the rental periods commencing 07 December 2019, 07 January 2020 and 07 February 2020—a total of \$6000.00.

The Tenant's Position

11. The tenant acknowledged that the rent for the last 3 rental periods had not been paid.

Analysis

12. As the tenant did not contest the landlord's claim for rent, that claim succeeds.
13. However, as the landlord is also seeking an order for possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
14. I calculate the rent owing to be \$5311.40 (\$2000.00 for the rental period beginning 07 December 2019, \$2000.00 for the period beginning 07 January 2020 and \$1311.40 for the period beginning 07 February 2020 (\$2000.00 per month x 12 months = \$24,000.00 per year ÷ 366 days = \$65.57 per day x 20 days = \$1311.40)).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$5311.40.

16. The tenants shall pay a daily rate of rent in the amount of \$65.57, beginning 27 February 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlord's Position

17. With her application, the landlord had submitted a copy of termination notice (█ #3), dated 04 February 2020. █ stated that it was his understanding that the landlord had arranged to have someone affix that notice to the tenant's door on that date.
18. That termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 15 February 2020.
19. The tenants have not complied with that notice and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

20. The tenant stated that he was aware that a termination notice had been issued, but he was not sure on what day it had been delivered to the rental unit.
21. The tenant stated that he would be in contact with the landlord over the next few days and he would make arrangements to pay the outstanding rent to her.
22. He also claimed that there is over \$40,000.00 worth of furniture in the house and he is going to need some time to make arrangements to have it removed if the landlord does indeed want vacant possession of the premises. He requested that he be given until 15 March 2020 to deliver up possession of the premises.

Analysis

23. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

(i) rented from month to month,

(ii) *rented for a fixed term, or*

(iii) *a site for a mobile home, and*

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

24. Based on the evidence submitted with the landlord's application, I find it probable that a termination notice was affixed to the tenant's door on 04 February 2020.
25. According to the landlord's records, on that date the tenants were in arrears in the amount of \$4000.00 and had been in arrears since 08 December 2019. The tenants have made no payments to the landlord since the notice was issued and since then rent for the rental period commencing 07 February 2020 has also come due.
26. As the termination notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice and the tenants ought to have vacated the property by 15 February 2020.

Decision

27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. The tenants shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 4: Security Deposit

29. It is acknowledged in the submitted lease that the tenants had paid a security deposit of \$1500.00. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

30. The landlord is entitled to the following:
 - A payment of \$3811.40, determined as follows
 - a) Rent Owing\$5311.40

b) LESS: Security Deposit..... (\$1500.00)

c) Total Owing to Landlord\$3811.40

- A payment of a daily rate of rent in the amount of \$65.57, beginning 27 February 2020 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenants shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

06 March 2020

Date



John R. Cook
Residential Tenancies Tribunal