

## Residential Tenancies Tribunal

Decision 20-0071-01

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **11:15 am** on **02 December 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 and was represented by [REDACTED] – Property Manager. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
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 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 **18 November 2020** by serving the original documents to the tenant via email: [REDACTED] and providing a copy of the sent email. The email was sent after 4:00 pm on 17 November 2020 and would be considered served the following day.

The tenant has had **13 days** to provide a response.

A phone call was placed to the number on file for the tenant:

- a) [REDACTED] – The male who answered indicated it was the wrong number.

6. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.

### Issues before the Tribunal

7. The landlord is seeking the following:
  - a) Payment of rent owing **\$438.35**;
  - b) Payment of late fees **\$75.00**
  - 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 Owing - \$438.35

#### Relevant Submissions

##### Landlord Position

10. The landlord stated that they entered into a written fixed term rental agreement with the agreed rent set at \$840.00 per month and due on the 1<sup>st</sup> day of each month. A security deposit in the amount of \$14.00 collected on this tenancy on

or about 20 March 2020. The landlord submitted into evidence a copy of the rental records (**Exhibit L # 1**) showing a total rent outstanding in the amount of \$438.35 up to and including 31 December 2020 inclusive of payments received from AES on behalf of the tenant on 01 December 2020. The landlord stated as of the hearing date 02 December 2020 the tenant remained in the unit and rent is outstanding.

11. The landlord further added that as of the termination date (06 September 2020), the tenant was in arrears.

## Analysis

12. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
13. Important to note at first is the indication in the landlord rent ledger of a promotional rent rate that was not disclosed at the hearing. This promotional rate is one month free over a 12 month period and the amount deducted monthly is \$70.00.
14. With respect to the arrears being claimed, I agree with the landlord that rent was owed at the time of the effective date of the termination. 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.
15. Records are clear that rent for the period ending 30 November 2020 has not been paid leaving a balance of **\$438.35**. Further, rent for December 1 - 2, 2020 can only be calculated up to and including the day of the hearing (02 December 2020). That calculation is ( $\$840.00 \times 12 \text{ months} = \$10080.00 \div 366 \text{ days} = \$27.54 \text{ per day} \times 2 \text{ days} = \$55.08$ ). Rent for December 1 - 2, 2020 is **\$55.08**
16. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$27.54** beginning on **03 December 2020** and continuing until the day the landlord obtain vacant possession of the rented premises.
17. As indicated from the rental records, there was a payment of rent from AES on 01 December 2020 in the amount of \$770.00 along with the promotional adjustment of \$70.00.

## Decision

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

- a) Rent owing up to 30 Nov 2020 ..... \$438.35
- b) Rent owing for Dec 1 - 2, 2020..... 55.08
- c) Total Arrears ..... **\$493.43**
  
- d) LESS: AES Payment 01 Dec 2020 ..... (\$770.00)
- e) LESS: Promotional Adjustment (01 Dec 2020) .... (\$70.00)
  
- f) Total credit to Tenant (as of 02 Dec 2020)..... (\$346.57)**
  
- g) A daily rate beginning **03 December 2020** ..... **\$27.54**

## Issue 2: Payment of Late Fees - \$75.00

### Landlord Position

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

## Analysis

- 21. 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 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
  
- 22. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

## Decision

- 23. 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

24. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
25. The landlord testified that when the tenant fell in arrears, she issued a termination notice under Section 19 of the Act (**Exhibit L # 2**) to terminate the tenancy on 06 September 2020. She testified that the notice was served by posting on the tenant's door and as of the hearing date (02 December 2020), the tenant remained in the unit. The landlord testified that there is 1 adult living in the unit.

#### **Analysis**

26. 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.
27. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.
28. 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 # 2**), I find the notice was served on 26 August 2020 with a termination date of 06 September 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 July 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).
29. 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.*

30. As identified above, the landlord testified that the termination notice was served by posting to the rented premises door which is a permitted method of service identified under Section 35.
31. 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**

32. 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.

#### **Issue 3: Hearing Expenses**

##### Landlord Position

33. 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 # 3**). The landlord is seeking this cost.

#### **Analysis**

34. 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**

35. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

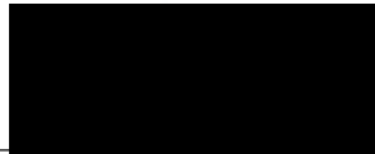
**Summary of Decision**

36. The entitlement is as follows:

- a) **Rent Credit December (up to and including 02 December 2020)..... (\$346.57)**
- b) LESS: Late Fees.....75.00
- c) LESS: Hearing Expenses ..... \$20.00
- d) **Total Tenant Credit (up to 02 December 2020)..... (\$251.57)**
  
- e) Vacant Possession of the Rented Premises
- f) A daily rate of rent set at **\$27.54** beginning **03 December 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

07 December 2020

**Date**



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