

Residential Tenancies Tribunal

Decision 20-0072-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 27 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”, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$335.00,
 - b. An order for a payment of late fees in the amount of \$75.00,
 - c. An order for a payment of hearing expenses in the amount of \$20.00,
 - d. An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone from the hearing room. This Tribunal’s policies

concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted affidavits with his application stating that the tenants had been served, by substituted service, on 13 February 2020 and they have had 13 days to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Rent Owing - \$335.00

Relevant Submissions

7. The landlord stated that he had entered into a 6-month, fixed-term rental agreement with the tenants on 01 June 2019. The agreed rent was set at \$675.00 and the landlord stated that the tenants had paid a security deposit of \$400.00.
8. The landlord stated that the rent was paid and up-to-date for the period ending 31 January 2020 but he testified that the tenants had only paid him \$340.00 towards February's rent, leaving a balance owing of \$335.00.
9. The landlord is seeking an order for a payment of rent in the amount of \$335.00.

Analysis

10. I accept the landlord's claim that the tenants had not paid rent as required. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
11. I calculate the amount owing to be \$257.51 ($\675.00 per month \times 12 months = $\$8100.00$ per year \div 366 days = $\$22.13$ per day \times 27 days = $\$597.51$ less the payment of $\$340.00$ made on 03 February 2020).

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$257.51.
13. The tenants shall pay a daily rate of rent in the amount of \$22.13, beginning 28 February 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

14. The landlord has assessed late fees.

Analysis

15. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

16. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

17. As the tenants have been in arrears since 02 February 2020, the landlord is entitled to late fees to the day of the hearing. I calculate that amount to be \$55.00 (\$5.00 for 02 February 2020 and \$50.00 for the period from 03 February to 27 February 2020 (25 days x \$2.00 per day)).

Decision

18. The landlord's claim for late fees succeeds in the amount of \$55.00.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

19. The landlord stated that he posted a termination notice to the door of the rental unit on 10 February 2020 and a copy of that notice was submitted with his application (█ #1).
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 21 February 2020.

21. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

22. 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.

23. According to the landlord's testimony, on 10 February 2020 the tenants were in arrears in the amount of \$335.00 and had been in arrears since the beginning of that month. The tenants have made no payments to the landlord since the notice was issued.

24. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

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25. The landlord's claim for an order for vacant possession of the rented premises succeeds.

26. 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

27. The landlord stated that the tenants had paid a security deposit of \$400.00 on 21 June 2019. As the landlord’s claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

28. As the landlord’s claim has been successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

29. The landlord is entitled to the following:


- Authorization to retain \$332.51 of the security deposit, determined as follows

a) Rent Owing	\$257.51
b) Late Fees	\$55.00
c) Hearing Expenses.....	\$20.00
d) Total	<u>\$332.51</u>

- A payment of a daily rate of rent in the amount of \$22.13, beginning 28 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.

03 March 2020

Date


John R. Cook

Residential Tenancies Tribunal