

Residential Tenancies Tribunal

Decision 20-0119-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 09 March 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 tenant, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises
 - An order for a payment of rent in the amount of \$750.00 and
 - Authorization to retain security deposit of \$400.00.

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 10, 19 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her 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) a

respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date 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 she has been properly served. The landlord testified that she had sent the claim and notice of the hearing to the tenant, by e-mail, on 25 February 2020 and she produced that e-mail at the hearing. The e-mail address used by the landlord was provided to her by the tenant in the rental agreement. The tenant has had 11 days to provide a response. As the tenant were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended her claim at the hearing and stated that she was seeking an additional month's rent for a claim now totalling \$1500.00.

Issue 1: Rent - \$1500.00

Relevant Submissions

8. The landlord stated that she had entered into a 9-month, fixed-term rental agreement with the tenant on 01 December 2019 and a copy of the executed lease was submitted with her application (█ #1). The agreed rent was set at \$750.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$400.00.
9. The landlord stated that the tenant's rent was paid and up-to-date for the period ending 31 January 2020, but she testified that no rent has been paid since.
10. The landlord is seeking an order for a payment of rent for February and March 2020.

Analysis

11. I accept the testimony of the landlord in this matter and find that the tenant has not paid her rent as required. As the landlord is also seeking an order for vacant 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.
12. I calculate the rent owing to be \$971.31 (\$750.00 for February 2020 and \$221.31 for March 2020 (\$750.00 per month x 12 months = \$9000.00 per year ÷ 366 days = \$24.59 per day x 9 days = \$221.31)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$971.31.

14. The tenant shall pay a daily rate of rent in the amount of \$24.59, beginning 10 March 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

15. With her application, the landlord submitted a copy of a termination notice (█ #2) which she stated she had sent to the tenant, by e-mail, on 24 February 2020. The landlord also submitted a copy of that e-mail with her application and she pointed out that the e-mail address she had used was provided to her by the tenant in the lease.
16. This termination notice was issued under 2 different sections of the *Residential Tenancies Act, 2018*: section 19 (notice where failure to pay rent) and section 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy). This notice had an effective termination date of 06 March 2020.
17. Regarding the issue of rent, the landlord reiterated that the tenant had not paid her rent for either February or March 2020.
18. With respect to the issue of peaceful enjoyment, the landlord stated that she had been receiving numerous complaints from the other residents in the house living in the apartment directly above the tenant.
19. According to the landlord, the other residents in the complex were complaining about loud arguments and fighting that can be heard coming from the tenant's apartment. The landlord stated that she suspects that the tenant is involved in an abusive relationship.
20. The landlord submitted into evidence copies of the e-mails and text-messages from these other residents in which they are making the complaints (█ #3). She also submitted a USB drive containing an audio recording of one of the altercations in the tenant's apartment (█ #5).
21. The landlord stated that the police have been called to the unit on a couple of occasions and she also submitted into evidence a copy of a police report (█ #4).
22. Besides the loud arguments which can be heard in the tenant's apartment, the other residents complained that the tenant and her boyfriend have been confrontational and abusive towards them. The landlord also testified that she has also received abusive text-messages from the tenant.

23. The landlord stated that the quiet and peaceful enjoyment of the residents in the upstairs unit has become so compromised that they are currently residing with friends until such time as the tenant moves out of her apartment.
24. For these 2 reasons, the landlord is seeking an order for vacant possession of the rented premises.

Analysis

25. With respect to the issue of rent, 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.

26. According to the landlord's testimony, on 24 February 2020 the tenant was in arrears in the amount of \$750.00 and had been in arrears since the beginning of that month. The tenant has made no payments to the landlord since the notice was issued and since then rent for March 2020 has also come due.
27. As the notice meets the timeframe requirements set out in section 19 of the *Act*, the notice is valid on those grounds.
28. With respect to the issue of peaceful enjoyment, statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord

and tenant that the following statutory conditions governing the residential premises apply:

...

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

and according to section 24 of this Act:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) 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.

29. The bulk of the evidence submitted by the landlord concerning this portion of her claim was hearsay evidence—that is, testimony about what other people (the residents living upstairs) had told her about what had been taking place at the rental unit. They were not called as witnesses to give any first-hand account of what had been taking place at the unit and I therefore assign that testimony little evidentiary weight.
30. Nevertheless, I accept the landlord's claim that the tenant had been acting in an anti-social manner towards her and the copies of the text-messages submitted at the hearing show that the tenant was at times verbally abusive in her dealings with the landlord. For that reason, I find that the landlord was also in a position, on 24 February 2020, to issue the tenant a notice under section 24 of the Act.
31. As the notice also meets the timeframe requirements set out under that section, the notice also valid on those grounds.

Decision

- 32. The landlord’s claim for an order for vacant possession of the rented premises succeeds.
- 33. The tenant 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


- 34. The landlord stated that the tenant had paid a security deposit of \$400.00 when she moved into the unit in December 2019. As the landlord’s claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

- 35. The landlord is entitled to the following:
 - A payment of \$571.31, determined as follows
 - a) Rent Owing\$971.31
 - b) LESS: Security Deposit..... (\$400.00)
 - c) Total Owing to Landlord\$571.31
 - A payment of a daily rate of rent in the amount of \$24.59, beginning 10 March 2020 and continuing to the date the landlord obtains possession of the rental unit,
 - An order for vacant possession of the rented premises,
 - The tenant 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.

10 March 2020

Date



John R. Cook
Residential Tenancies Tribunal