

## Residential Tenancies Tribunal

Decision 20-0147-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 2:15 pm on **13 May 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 landlord1, participated in the hearing and was represented by [REDACTED] - [REDACTED] (*Affirmed*).
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing and was represented by [REDACTED] - [REDACTED] (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as tenant1, did not participate in the hearing.
5. The respondent, [REDACTED], hereafter referred to as tenant2, did not participate in the hearing.
6. 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

7. The application was AMENDED at the hearing to:
  - a. Amend the file to increase rent being claimed to \$6600.00 reflecting rent that has come due since the filing of the application and up to 31 May 2020.

8. The tenants, [REDACTED] & [REDACTED], were 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 landlords show that the tenants were served with the notice of this hearing on the **29 April 2020** by serving the documents to the tenants via email: [REDACTED] The tenants have had **14 days** to provide a response.

Contact was attempted to the tenants via the phone numbers on file:

[REDACTED]: No answer, Message left  
[REDACTED]: Not in Service

9. As the tenants were 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 tenants' absence.

### **Issues before the Tribunal**

10. The landlord is seeking the following:
  - a) Payment of rent owing **\$6600.00**;
  - b) Payment of late fees
  - c) Hearing expenses.

### **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 Owing - \$6600.00

### Relevant Submissions

#### Landlord Position

13. The landlord testified that the tenants' failed to make regular rental payments and accrued arrears.
14. The landlord stated that he had entered into a monthly rental agreement with the tenants with the agreed rent set at \$1300.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$650.00 was collected on this tenancy on or about 01 May 2016. The landlords stated that the tenants made the last payment against the arrears on 03 February 2020 in the amount of \$500.00 and as of the hearing date remained in arrears. The landlords demonstrated the arrears with rental records (**Exhibit L # 2**) as total rent outstanding is \$6600.00 up to and including 31 May 2020.

#### Analysis

15. I have reviewed the testimony and evidence of the landlords 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 landlords actually owed by the tenants.
16. With respect to the arrears being claimed, I agree with the landlords that rent is owed by only the respondents in this matter. Rent is required to be paid by the tenants for use and occupation of the rented premises as set out in the written rental agreement established when the tenancy began. Records are clear that rent for the period ending 30 April 2020 has not been paid leaving a balance of **\$5300.00**. Further, rent for May 1 – 13, 2020 is calculated up to and including the hearing date (13 May 2020) calculated as  $(\$1300.00 \times 12 \text{ months} = \$15,600.00 \div 366 \text{ days} = \$42.62 \text{ per day} \times 13 \text{ days} = \$554.06)$ . Rent for May 1 – 13, 2020 then is **\$554.06**.
17. The landlords are entitled to a daily rate of rent commencing 14 May 2020 until the day the landlords obtain vacant possession.

## Decision

18. The landlords' total claim for rent succeeds as follows:
- a) Rent owing up to 30 April 2020 ..... \$5300.00
  - b) Rent owing for May 1 – 13, 2020 ..... 554.06
  - c) Total Arrears ..... **\$5854.06**
  
  - d) **Total Owing**..... **\$5854.06**
  
  - e) A daily rate of rent commencing 14 May 2020 ..... \$42.62

## Issue 2: Vacant Possession of the Rented Premises

### Landlord Position

19. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
20. The landlords testified that when the tenants fell in arrears, they issued a termination notice under Section 19 of the Act (**Exhibit L # 3**) to terminate the tenancy on 16 February 2020. They testified that the notice was served personally and as of the hearing date (13 May 2020), the tenants remained in the unit. The landlords testified that there are 2 adults and 3 children under 10 years of age living in the unit.

### Analysis

21. 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.
22. The issue of rental arrears has been determined above confirming that the tenants owes rent to the landlords.
23. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlords may give the tenants a termination notice to vacate the property not less than 10 days after the notice is served on the tenants. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 05 February 2020 with a termination date of 16 February 2020. As established above and undisputed by the tenants, rent had been in arrears since January 2020. As rent had been in arrears for 30 plus days, 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 tenants are required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).

24. 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.*

25. As identified above, the landlords testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
26. According to the reasons identified above, I find that the termination notice issued by the landlords to be proper and valid. Therefore, the landlords are 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**

27. The landlords' claim for vacant possession succeeds. The landlords are further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

### Issue 3: Hearing Expenses

#### Landlord Position

28. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ( [REDACTED] ) (**Exhibit L # 4**). The landlords are seeking this cost.

#### **Analysis**

29. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlords 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 tenants are responsible to cover these reasonable expenses.

#### **Decision**

30. The tenants shall pay the reasonable expenses of the landlords in the amount of \$20.00.

#### **Summary of Decision**

31. The landlords are entitled to the following:

- a) Rent Owing .....\$5854.06
- b) Hearing Expenses ..... \$20.00
- c) **Total owing to the landlords .....\$5874.06**
  
- d) Vacant Possession of the Property
- e) A daily rate of rent set at **\$42.62** beginning 14 May 2020 and continuing until the day the landlords obtain vacant possession of the Rented Premises.
- f) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

27 May 2020

**Date**

[REDACTED]  
**Michael Greene**  
**Residential Tenancies Tribunal**