

Residential Tenancies Tribunal

Decision 20-0167-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:03 am on 21 July 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$2100.00,
 - b. An order for a payment of late fees in the amount of \$75.00, and
 - c. 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 are sections 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. 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 a 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 submitted an affidavit with her application stating that she had personally served the tenant with notice of the hearing on 09 March 2020 and she has had 133 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

8. The landlord amended her application and stated that she was now seeking a payment of rent in the amount of \$2490.00.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

9. The landlord stated that she had entered into a rental agreement with the tenant's father some years ago, and after he passed away, the tenant remained at the unit as a sole leaseholder. The current rent is set at \$840.00 and the landlord stated that she is holding a \$200.00 security deposit.
10. The landlord submitted rent records with her application showing the payments she had received from the tenant since 2012. According to these records, the tenant last had a zero balance in December 2019. The records also show that the tenant made no rental payments for January 2020 and she only paid \$420.00 for February 2020, leaving her with a balance of \$1260.00 for the period ending 29 February 2020.
11. The landlord stated that as the tenant had fallen into arrears, she elected to terminate the rental agreement and a copy of a termination notice was submitted with her application. The landlord testified that this notice was delivered to the tenant on 25 February 2020 and it had an effective termination date of 07 March 2020.
12. According to the landlord's records, no payments were made between 25 February 2020, the date the notice was issued, and 07 March 2020, the effective termination date set out in the notice.
13. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

14. 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),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

15. According to the landlord's rent records, on 25 February 2020 the tenant was in arrears in the amount of \$1680.00 and had been in arrears since the beginning of January 2020.
16. As the tenant had not paid off all of the arrears prior to 07 March 2020 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

17. The landlord's claim for an order for vacant possession of the rented premises succeeds.
18. 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 2: Rent Owing - \$2490.00

Relevant Submissions

19. The landlord's rent records show that for the period from 01 January 2020 to 30 April 2020, the tenant only made 2 rent payments, totalling \$870.00, leaving a balance owing of \$2490.00. The tenant has made her rent payments for May, June and July 2020, but she has not paid off any of the \$2490.00 owing since April 2020.
20. The landlord is seeking an order for a payment of rent in the amount \$2490.00.

Analysis

21. I accept the landlord's evidence which shows that the tenant had not paid her rent as required and that between January and April 2020 she had racked up \$2490.00 in rental arrears. However, as the landlord has been granted 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.
22. I calculate the amount owing to be \$2228.34 (\$2490.00 for the period ending 30 June 2020, \$578.34 for July 2020 ($\$840.00 \times 12 \text{ months} = \$10080.00 \text{ per year} \div 366 \text{ days} = \$27.54 \text{ per day} \times 21 \text{ days} = \578.34) less the payment of \$840.00 paid on 01 July 2020).

Decision

23. The landlord's claim for a payment of rent succeeds in the amount of \$2228.34.
24. The tenant shall pay a daily rate of rent in the amount of \$27.54, beginning 22 July 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 3: Late Fees

Relevant Submissions

25. The landlord has assessed late fees in the amount of \$75.00.

Analysis

26. 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.*

27. 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.

28. As the tenant first fell into rental arrears in January 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

29. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Hearing Expenses

30. The landlord submitted a hearing expense claim form and a receipt showing that she had paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Issue 5: Security Deposit

31. The landlord stated that the tenant's father had paid a security deposit of \$200.00 when he first moved into the property. That was on 01 December 1998. According to this Section's Security Deposit Interest Calculator (<https://www.gov.nl.ca/snl/landlord/deposit-calc/>) that deposit has accrued \$24.17 in interest. As the landlord's claim has been successful, she shall retain the security deposit plus the interest as outlined in this decision and order.

Summary of Decision

32. The landlord is entitled to the following:

- A payment of \$2099.17 , determined as follows:
 - a) Rent Owing\$2228.34
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) LESS: Security Deposit..... (\$224.17)
 - e) Total.....\$2099.17

- An order for vacant possession of the rented premises,

- A payment of a daily rate of rent in the amount of \$27.54, beginning 22 July 2020 and continuing to the date the landlord obtains possession of the rental unit,

- 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.

07 August 2020

Date



John R. Cook
Residential Tenancies Tribunal