

Residential Tenancies Tribunal

Decision 20-0235-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **10:45 am** on **08 June 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. Landlord witness, [REDACTED] – *Affirmed*, hereafter referred to as [REDACTED].
6. 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 **20 May 2020** by serving the original documents to the tenant personally at the rented premises.

The tenant has had **18 days** to provide a response.

A phone call was placed to the tenant at the number [REDACTED] with no answer.

7. 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

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$219.75**;
 - b) Payment of late fees **\$75.00**
 - c) Vacant possession of the rented premises;
 - d) Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 19, 24, 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 Owning - \$219.75

Relevant Submissions

Landlord Position

11. The landlord stated that he had entered into a one year fixed term rental agreement with the tenant set to expire on 31 March 2021. The agreed rent is set at \$625.00 per month and due on the 1st day of each month with a security deposit in the amount of \$372.00 collected on this tenancy on or about 12 March

2020. The landlord demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is \$219.75 up to and including 30 June 2020. The landlord stated as of the hearing date 08 June 2020 the tenant remained in the unit and rent is outstanding.

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. With respect to the arrears being claimed, I agree with the landlord that rent is owed. 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. Records are clear that rent for the period ending 31 May 2020 has not been paid leaving a balance of **\$219.75**. Further, rent for June 2020 can only be calculated up to and including the day of the hearing (08 June 2020). That calculation is ($\$625.00 \times 12 \text{ months} = \$7500.00 \div 366 \text{ days} = \$20.49 \text{ per day} \times 8 \text{ days} = \163.92). Rent for June 1 – 8, 2020 is **\$163.92**.
14. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$20.49** beginning on 9 June 2020 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

15. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 31 May 2020 \$219.75
 - b) Rent owing for June 1 - 8, 2020 163.92
 - c) Total Arrears **\$383.67**
 - d) LESS: AES Payment 01 June 2020 (\$625.00)
 - e) **Total credit to Tenant..... (\$241.33)**
 - f) A daily rate beginning 09 June 2020 **\$20.49**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

16. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.

17. The landlord testified that the tenant has been in arrears on an ongoing basis since 31 March 2020. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

18. Established by undisputed fact above, the tenant was in arrears since 31 March 2020. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
19. The issue of rental arrears has been determined above confirming that the tenant has been in arrears since 31 March 2020.

Decision

20. 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

21. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
22. The landlord testified that there was an incident at the building (**Exhibit L # 3**) on [REDACTED] involving fire/smoke and various emergency responders. The landlord testified that it was believed that due to an amount of smoke in the building, that there was a fire and 911 was contacted and the Fire Department responded. It was determined that a fire extinguisher was discharged in the building.
23. It was apparent from the landlord that the respondent and a now former tenant ([REDACTED]), were friends and hung out with each other in the building. The landlord called a witness, [REDACTED], who confirmed that there was an incident at the building that involved a discharged fire extinguisher.
24. The witness testified that the residents of the building were distraught when the fire alarm sounded and with the commotion of the emergency responders on site. The witness testified that the respondent was very angry and was screaming "It's not a fire....it's not a fire" in the witness's face. The witness stated that she was very unsettled with the actions of the respondent towards her.

25. The witness further stated that the respondent started a fight with a fireman attending to the emergency call and knocked him to the ground. She stated that the Royal Newfoundland Constabulary were called (RNC) and a Police file was established ([REDACTED]).
26. The landlord stated that he cannot say that it was the respondent who discharged the extinguisher, but the actions of the respondent to scream at the witness to the point of making her unsettled and the interfering with the emergency responders to a call at the landlord's building does constitute an interference with the peaceful enjoyment of the landlord.

Analysis

27. Established by undisputed statement of fact above, the rental agreement is a written fixed term tenancy. The notice issued to terminate this tenancy was issued under section 24 of the *Act*. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 24(1) & (2) and 34 as well as the service requirements identified in Section 35.
28. The issue of interference with peaceful enjoyment of the landlord has been presented by the landlord as aggressive mannerisms of the tenant towards the witness (Resident Manager of the Building) and the local Fire Department Personnel attending to an emergency call to the landlord's building.
29. The witness was involved first hand with the aggressive behaviors of the tenant and has made the statements to the tribunal under oath. Additionally, the witness also has first-hand knowledge of the incident with the emergency personnel and I can see no reason why I should not accept her testimony as genuine. As such, I accept the evidence of the landlord witness as related at the hearing and backed up by the documentary internal incident report identified as Exhibit L # 3.
30. I find that the tenant has interfered with the peaceful enjoyment of the landlord by exhibiting aggressive behaviors towards the Resident Building Manager and the responding emergency personnel.
31. Section 24(1) requires that where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give a 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. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 24 April 2020 with a termination date of 01 May 2020.

32. As established above and undisputed by the tenant, it is the finding of this tribunal that the tenant has breached statutory condition 7(a) of subsection 10(1). I find that as the date of termination identified on the notice is a specified date (01 May 2020) and is greater than 5 days after the service date (24 April 2020). As such, the termination notice is in full compliance with the requirements of Section 24 (1) and (2).
33. Sections 24 (2) 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 24. (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.*

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.*

34. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
35. 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

36. 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.

