

Residential Tenancies Tribunal

Decision 20-0334-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 10:30 am on **30 September 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 Teleconference System.
2. The applicant, [REDACTED], hereafter referred to as landlord, participated in the hearing and was represented by [REDACTED] - *Affirmed*.
3. The respondent, [REDACTED], ([REDACTED]) hereafter referred to as tenant1, did not participate in the hearing.
4. The respondent, [REDACTED], ([REDACTED]) hereafter referred to as tenant2, did not participate in the hearing.
5. 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

6. The application was AMENDED at the onset of the hearing to increase the rent being claimed from \$560.00 to \$1270.00 resulting from rent that has come due since the filing of the application.
7. 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 landlord shows that [REDACTED] was served with the notice of this hearing on the **09 September 2020** by serving the application for dispute resolution document to the tenant by registered mail ([REDACTED]) and verified by Canada Post. Canada Post verifies that the package was placed in the assigned mailbox. Service is attained in accordance with section 42(6) of the Residential Tenancies Act, 2018 on the 5th day after mailing. The tenant has had **20 days** to provide a response.

The affidavit submitted by the landlord shows that [REDACTED] was served with the notice of this hearing on the **09 September 2020** by serving the application for dispute resolution document to the tenant by registered mail ([REDACTED]) and verified by Canada Post. Canada Post verifies that the package was placed in the assigned mailbox. Service is attained in accordance with section 42(6) of the Residential Tenancies Act, 2018 on the 5th day after mailing. The tenant has had **20 days** to provide a response.

There was no contact information for the tenants on file to make contact in the advance of the hearing.

As the tenants were properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$1270.00**;
 - b) Payment of late fees
 - 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, 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 - \$1270.00

Relevant Submissions

Landlord Position

11. The landlord stated that they had entered into a written monthly rental agreement with the tenants, commencing 01 October 2018 with rent due on the first day of each month (**Exhibit L #1**). The agreed rent was set at \$960.00 per month and a security deposit in the amount of \$480.00 collected on this tenancy.
12. The landlord stated that rent is owing in the amount of \$1270.00 for the period ending 30 September 2020. The landlord submitted a rental ledger (**Exhibit L # 2**) as evidence to support the claim along with a copy of the rental agreement (Exhibit L # 1

Analysis

13. 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 tenants.
14. With respect to the arrears being claimed, there is no doubt that the tenants owe rent in the amount of **\$1270.00** for the period ending 30 September 2020 which is also the hearing date. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$31.48** beginning on 01 October 2020 and continuing until the day the landlord obtains vacant possession of the rented premises. That calculation is ($\$960.00 \times 12 \text{ months} = \$11,520.00.00 \div 366 \text{ days} = \31.48 per day).

Decision

15. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 30 September 2020 **\$1270.00**
 - b) **Total Owing to Landlord** **\$1270.00**
 - c) **A daily rate beginning 01 October 2020** **\$31.48**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

16. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
17. The landlord testified that the tenants has been in arrears without a zero balance since 12 June 2020. The landlord indicated that the amount being claimed as the maximum allowable under the regulations in the amount of \$75.00 as any calculated amount would exceed the maximum permitted to be charged.

Analysis

18. Established by undisputed fact above, the tenants were in arrears since 12 June 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. The calculated amount in this case would far exceed the maximum allowable of \$75.00.
19. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlord.

Decision

20. The landlord's claim for late fees succeeds in the amount 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 when the tenants fell in arrears and as such issued a termination notice under Section 19 of the Act (**Exhibit L # 3**) to terminate the tenancy on 31 July 2020. She testified that the notice was served by posting it to the door of the rented premises on 20 July 2020 and as of the hearing date (30 September 2020), the tenants remained in the unit. The landlord testified that there are two adults living in the unit.

Analysis

23. Established by undisputed statement of fact above, the rental agreement is a written monthly tenancy commencing on 01 October 2018 with rent due on the 1st

day of each month. 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.

24. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlord.
25. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenants a termination notice to vacate the property not less than 10 days after the notice is served on the tenant. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 20 July 2020 with a termination date of 31 July 2020. As established above and undisputed by the tenants, rent had been in arrears since 12 June 2020. As rent had been in arrears for 48 days, I find this is 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 is required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).
26. Sections 19. (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find it all these criteria have been met.

27.

<p><i>Section 19. (4)</i></p> <p><i>In addition to the requirements under Section 34, a notice under this section shall</i></p> <ul style="list-style-type: none"><i>(a) be signed by the landlord;</i><i>(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and</i><i>(c) be served in accordance with section 35.</i> <p><i>Section 34</i></p> <p><i>A notice under this Act shall</i></p> <ul style="list-style-type: none"><i>(a) be in writing in the form prescribed by the minister;</i><i>(b) contain the name and address of the recipient;</i><i>(c) identify the residential premises for which the notice is given; and</i><i>(d) state the section of this Act under which the notice is given.</i>

28. As identified above and undisputed by the tenants, the landlord testified that she served the termination notice by posting it in a conspicuous place upon the rented premises (namely the main entrance door) which is a permitted method of service identified under Section 35.

29. 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 cost associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

30. 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.

Issue 3: Hearing Expenses

Landlord Position

31. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████████) (**Exhibit L # 4**), The landlord is seeking this cost.

Analysis

32. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord 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

33. The tenants shall pay the reasonable expenses of the landlord in the amount of \$20.00

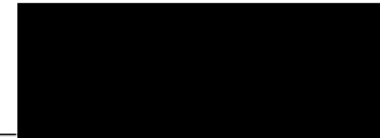
Summary of Decision

34. The landlord is entitled to the following:

- a) Rent Owing\$1270.00
- b) Late Fees 75.00
- b) Hearing Expenses \$20.00
- c) Total Owing to the Landlord\$1365.00**
- d) Vacant Possession of the Rented Premises
- e) A daily rate of rent set at **\$31.48** beginning **01 October 2020** and continuing until the day the landlord obtains vacant possession of the rented premises.
- f) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

06 October 2020

Date



Michael Greene
Residential Tenancies Tribunal