

Residential Tenancies Tribunal

Decision 20-0404-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **2:45 pm** on **24 November 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing and was represented by [REDACTED].
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$402.00 per month and due on the 1st of each month. It was stated that there was no security deposit collected on this tenancy. The landlord issued a termination notice dated 13 August 2020 for the intended termination date of 31 August 2020 under Section 19 of the *Residential Tenancies Act, 2018*.
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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 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 the original hearing on the **02 October 2020** by serving the application for dispute resolution document to the tenant by registered mail ([REDACTED]) and verified by Canada Post.

The affidavit submitted by the landlord shows that the tenant was served with the notice of the rescheduled hearing on the **11 November 2020** by serving the application for dispute resolution document to the tenant by registered mail ([REDACTED]) and verified by Canada Post. The item would be considered served on the 5th day after mailing as allowed for under section 42(6) of the *Residential Tenancies Act, 2018*.

The tenant has had **12 days** to provide a response.

A phone call was placed to the tenant to the number [REDACTED] and the tenant indicated that she was advised the hearing was cancelled by her housing officer. The tenant indicated she was at work and couldn't deal with this right now. The tribunal notes that the tenant failed to pick up the notice of rescheduled hearing and wouldn't be aware of the hearing dates. If she wasn't aware of the hearing, I fail to see her level of enthusiasm that a hearing would be cancelled.

As the tenant was 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.

7. The landlord amended the claim at the hearing to:
 - a. Decrease the amount of rent being claimed to \$3438.90 as a result of rent that has come due since the filing of the application and payments made.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$3438.90**
 - c) 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 Owning - \$3438.90

Relevant Submissions

Landlord Position

11. The landlord stated that they had entered into a written rental agreement with the tenant, commencing 16 May 2012. The agreed rent is at \$402.00 per month and due on the 1st day of each month with no security deposit collected on this tenancy. The landlord issued a termination notice (**Exhibit L # 3**) on 13 August 2020 for the intended date of 31 August 2020 (section 19). The landlord stated that rent was outstanding in the amount of \$3438.90 (**Exhibit L # 1**) for the period ending 30 November 2020 and stated as of the hearing date 24 November 2020 rent remains outstanding.

Analysis

12. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one 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 rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 October 2020 is

outstanding in the amount of **\$3036.90**. Rent for the month of November can only be awarded up to and including the hearing date (24 November 2020) and is calculated as ($\$402.00 \times 12 \text{ months} = \$4,824.00 \div 366 \text{ days} = \$13.18 \text{ per day} \times 24 \text{ days} = \316.32). Rent for November 1 – 24, 2020 then is **\$316.32**.

14. The landlord is further awarded a daily rate of rent in the amount of **\$13.18** commencing on **25 November 2020** and continuing until the day the landlord obtains vacant possession of the property.

Decision

15. The landlord's total claim for rent succeeds as follows:

a) Rent owing up to 31 October 2020.....	\$3036.90
b) Rent owing for November 1 – 24, 2020.....	<u>316.32</u>
c) Sub-total.....	\$3353.22
d) Total Arrears	<u>\$3353.22</u>

- e) The landlord is awarded a daily rate of rent in the amount of **\$13.18** beginning on **25 November 2020** and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Hearing Expenses

Landlord Position

16. 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 # 5**). The landlord is seeking this cost.

Analysis

17. 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 tenant is responsible to cover these reasonable expenses.

Decision

18. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

19. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
20. The landlord testified that the tenant has failed to pay rent as required by the rental agreement and has accumulated excessive rental arrears. The landlord submitted a copy of the termination notice (**Exhibit L # 3**) issued to the tenant on 13 August 2020 for the intended termination date of 31 August 2020 thereby terminating the tenancy effective 31 August 2020.
21. The landlord testified that the notice to terminate was issued to the tenant on 13 August 2020 by registered mail ([REDACTED]) as per section 35(5) of the *Residential Tenancies Act, 2018*. The landlord indicated that as of the hearing date (24 November 2020), there is one (1) adult and 1 child aged 13 years living in the unit.

Analysis

22. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19(4) and 34 as well as the service requirements identified in section 35.
23. The issue of rental arrears has been established above. There is no doubt that the tenant owes rent to the landlord and has failed to pay all the arrears by the ending date of the termination notice (31 August 2020).
24. The landlord issued a termination notice under section 19 of the *Residential Tenancies Act* by serving the notice registered mail. Section 19 requires that the landlord provide notice to the tenant that the rental agreement is terminated and the tenant is required to vacate the property on a specified date not less than 10 days after the notice has been served. I accept the evidence of the landlord and find that the tenant failed to make the required rent payments thereby accumulating rental arrears as calculated.
25. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 18 August 2020(as per section 42(6) of the *Residential Tenancies Act, 2018*) with a termination date of 31 August 2020. As established above, the tenant has outstanding rent beyond the date of termination. I further find that as the date of termination identified on the notice is not less than 10 days after the notice has been served and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 19(4). 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.

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.*

26. As identified above, the landlord testified that she served the termination notice byway of a permitted method of service identified under section 35.
27. 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

28. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

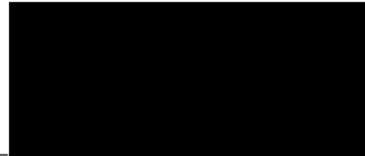
29. The landlord is entitled to the following:

- a) Rent Owing (up to and including 24 November 2020)\$3353.22
- b) Hearing Expenses \$20.00
- c) **Total owing to Landlord****\$3373.22**

- d) Vacant Possession of the Rented Premises.
- e) A daily rate of rent in the amount of **\$13.18** beginning **25 November 2020**.
- f) 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.

26 November 2020

Date



Michael Greene
Residential Tenancies Tribunal