

Residential Tenancies Tribunal

Decision 21-0004-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm** on **09 March 2021** 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. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
4. The details of the claim were presented as a written fixed term agreement with rent set at \$750.00 per month with utilities excluded, due on the 1st of each month and the term set to expire on 30 April 2021. A security deposit in the amount of \$375.00 was collected on or about 01 May 2020.
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 hearing to increase rent claimed as a result of rent that has come due since the filing of the application. The new amount outstanding is \$4125.00.

7. 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 **24 February 2021** by serving the original documents to the tenant personally at the rented premises.

A phone call was placed to the tenant's number on file [REDACTED] with no answer and a message left.

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

8. 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

9. The landlord is seeking the following:
- a) Payment of rent owing **\$4125.00**;
 - b) Payment of late fees
 - c) Vacant possession of the rented premises;
 - d) Hearing expenses.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. 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 - \$4125.00

Relevant Submissions

Landlord Position

12. The landlord stated that he had entered into a written fixed term rental agreement with the tenant with agreed rent set at \$750.00 per month and due on the 1st day of each month. There was a security deposit in the amount of \$375.00 collected on this tenancy on or about 01 May 2020.
13. The landlord demonstrated the claimed arrears with rental records (**Exhibit L # 2**) as total rent outstanding is \$4125.00 up to and including 31 March 2021. The landlord stated as of the hearing date 09 March 2021 the tenant remained in the unit and rent is outstanding.

Analysis

14. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there are 2 issues here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant; (ii) is this claim subject to the Amendments enacted by the Government of NL and Labrador regarding the COVID-19 Pandemic, Chapter C-37.03.
15. With respect to the amendments enacted by the Government of Newfoundland & Labrador, there has been no evidence that the tenant requested any extension to the termination notice nor provided any records to the landlord to indicate a reduction in wages or a loss of employment directly as a result of the Covid-19 pandemic and therefore item (ii) above is not applicable.
16. 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.
17. The amount of rent being claimed by the landlord (\$4125.00) does not match the records presented into evidence. For the purpose of illustrating in this decision I have replicated the landlord records taking out any late fees (which will be addressed in a separate section). The table below represents the rental records:

Table # 1: Landlord Rental Records

Date	Comment	Due	Payment	Balance
	Bal. Forward from 31 Aug 2020	\$ -	\$ -	\$0.00
1-Sep-20	Rent Due	\$ 750.00		(\$750.00)
8-Sep-20	Rent Payment		\$ 375.00	(\$375.00)
1-Oct-20	Rent Due	\$ 750.00		(\$1,125.00)
8-Oct-20	Rent Payment		\$ 750.00	(\$375.00)
1-Nov-20	Rent Due	\$ 750.00		(\$1,125.00)
8-Nov-20	Rent Payment		\$ 750.00	(\$375.00)
1-Dec-20	Rent Due	\$ 750.00		(\$1,125.00)
1-Jan-21	Rent Due	\$ 750.00		(\$1,875.00)
1-Feb-21	Rent Due	\$ 750.00		(\$2,625.00)
1-Mar-21	Rent Due	\$ 750.00		(\$3,375.00)

18. From the decision point of view, the evidence will guide the decision. Records are clear that rent for the period ending 28 February 2021 has not been paid leaving a balance of **\$2625.00**. Further, rent for March 2021 can only be calculated up to and including the day of the hearing (09 March 2021). That calculation is ($\$750.00 \times 12 \text{ months} = \$9000.00 \div 365 \text{ days} = \$24.66 \text{ per day} \times 9 \text{ days} = \221.94). Rent for March 1 – 9, 2021 is **\$221.94**.

Decision

19. The landlord’s total claim for rent succeeds as follows:

a) Rent owing up to 28 February 2021	\$2625.00
b) Rent owing for March 1 – 9, 2021	<u>221.94</u>
c) Total Arrears	\$2846.94
 d) Total due to Landlord.....	<u>\$2846.94</u>

Issue 2: Payment of Late Fees - \$5700.00

Landlord Position

20. The landlord is seeking payment of late fees as a result of the tenant’s failure to pay rent on time. The landlord testified that he added the late fees into the claim to “encourage tenants to pay rent on time”.
21. The landlord testified that the tenant has been in arrears on an ongoing basis as indicated in the records above.

22. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

23. Established by undisputed fact above, the tenant was in arrears since September 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.
24. The landlord's use of enormous amounts of late fees serves no purpose other than to escalate an already delicate situation and amounts to intimidation tactics. These methods are not permitted nor are they welcomed, as the landlord was advised at the hearing.
25. Any calculated amount of late fees would exceed the maximum allowable under regulation.
26. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord. As such, the landlord's claim for late fees succeeds in the amount of \$75.00 which is the maximum allowable under regulations per late period.

Decision

27. 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

28. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
29. The landlord testified that when the tenant fell in arrears, he issued a termination notice (**Exhibit L # 3**) to terminate the tenancy on 15 January 2021. He testified that the notice was served personally and as of the hearing date (09 March 2021), the tenant remained in the unit. The landlord testified that there are 2 adults and 1 minor child living in the unit.

Analysis

30. Established by undisputed statement of fact above, the rental agreement is a 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.
31. In addition, the determination of an order of possession is subject to the amendments enacted by the Province (Chapter C-37.03 regarding the amendments to the *Residential Tenancies Act, 2018*).
32. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.
33. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenant 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 17 December 2020 with a termination date of 15 January 2021. As established above and undisputed by the tenant, rent had been in arrears since September 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 tenant is required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).

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.*

34. Sections 19. (4) and 34 above identify the technical requirements of the termination notice. On examination of the termination notice, I note that the notice entered into evidence does not state the section of this *Act* under which the notice is given as required. This lack of specific information is missing and is

imperative to the validity of the notice. As such, I find that all of the criteria has not been met.

35. According to the reasons identified above, I find that the termination notice issued by the landlord is not proper and therefore not valid. Therefore, the landlord is not entitled to an order for vacant possession of the property

Decision

36. The landlord’s claim for vacant possession fails.

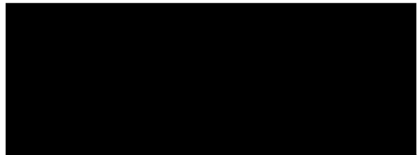
Summary of Decision

37. The landlord is entitled to the following:

a)	Rent Owning (Up to and including 09 March 2021).....	\$2846.94
b)	Late Fees.....	<u>75.00</u>
c)	Total Owning to the Landlord	\$2921.94

11 March 2021

Date



Michael Greene
Residential Tenancies Tribunal