

## Residential Tenancies Tribunal

Decision 21-0022-03

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **1:45 pm** on **07 June 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 landlord1, participated in the hearing (*Affirmed*).
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as tenant, participated in the hearing (*Affirmed*).
5. The details of the claim were presented as a written monthly agreement with rent set at \$1500.00 per month exclusive of utilities and due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$1125.00 was collected on or about 20 January 2021. The landlords issued two termination notices as follows:
  - a. 20 April 2021 for the intended termination date of 30 April 2021 (sec 19)
  - b. 05 May 2021 for the intended termination date of 17 May 2021 (sec 19)
6. 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

7. The application was AMENDED at the hearing to:
  - a. Amend the file to increase rent being claimed to \$4291.00 reflecting rent that has come due and payments made by the tenant since the filing of the application.
8. The affidavit submitted by the landlords show that the tenant was served with the notice of this hearing on the **27 May 2021** by serving the documents to the tenant by email to the address: [REDACTED] and providing a copy of the sent email and verification that the email was provided by the tenant in the rental agreement.
9. A phone call was placed to the tenant at [REDACTED] and the tenant answered. The tenant agreed to be placed into the call and participate.

## Issues before the Tribunal

10. The landlord is seeking the following:
  - a) Vacant Possession;
  - b) Payment of rent owing **\$4291.00**;
  - c) Payment of late fees **\$75.00**;
  - d) Hearing expenses.

## Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are:
  - a. Sections 19, 34 and 35 of *the Act*, and
  - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

## Issue 1: Rent Owing - \$4291.00

### Relevant Submissions

#### Landlord Position

13. Landlord1 testified that the tenant has failed to pay a significant amount of rent leaving the amount outstanding of \$4291.00 up to and including 30 June 2021.

14. Landlord1 presented a copy of a rent ledger (**Exhibit L # 1**) of amounts outstanding and indicated that the tenant has made payments in May 2012 in the amount of \$500.00 and an additional \$750.00 in early June 2021. Landlord1 further submitted a copy of the rental agreement (**Exhibit L # 2**).

Tenant Position

15. The tenant testified that she was and still is having financial troubles which lead to the arrears. The tenant acknowledges the arrears and indicated that she has full intentions of paying the landlords.

**Analysis**

16. I have reviewed the testimony and evidence of the landlord and tenant 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 landlords actually owed by the tenant.
17. With respect to the arrears being claimed, I agree with the landlords that rent is owed by the tenant. 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 2021 has not been paid leaving a balance of **\$3500.00**.

**Table # 1: Rental Records and Payments**

Date	Comment	Due	Payment	Balance
	Bal. Forward	\$ -	\$ -	\$0.00
1-Feb-21	Rent Due	\$ 1,500.00		(\$1,500.00)
15-Feb-21	Rent Payment		\$ 1,000.00	(\$500.00)
1-Mar-21	Rent Due	\$ 1,500.00		(\$2,000.00)
8-Mar-21	Rent Payment		\$ 500.00	(\$1,500.00)
1-Apr-21	Rent Due	\$ 1,500.00		(\$3,000.00)
16-Apr-21	Rent Payment		\$ 500.00	(\$2,500.00)
1-May-21	Rent Due	\$ 1,500.00		(\$4,000.00)
1-May-21	Rent Payment		\$ 500.00	(\$3,500.00)
1-Jun-21	Rent Due	\$ 1,500.00		(\$5,000.00)
1-Jun-21	Rent Payment		\$ 750.00	(\$4,250.00)

18. Further, rent for June 1 - 7, 2021 is calculated up to and including the day of the hearing (07 June 2021). That calculation is (\$1500.00 x 12 months = \$18,000.00 ÷ 365 days = \$49.32 per day x 7 days = \$345.24). Rent for June 1 – 7, 2021 then is **\$345.24**.

## Decision

19. The landlords' total claim for rent succeeds as follows:
- a) Rent owing up to 31 May 2021 ..... \$3500.00
  - b) Rent owing for June 1 – 7, 2021 ..... 345.24
  - c) Total Arrears ..... **\$3845.24**
  - d) **LESS: Tenant Payment June 2021 ..... (\$750.00)**
  - e) **Total Owing..... \$3095.24**
  - f) A daily rate of rent beginning 08 June 2021 ..... \$49.32

## Issue 2: Vacant Possession of the Rented Premises

### Landlord Position

20. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
21. Landlord1 testified that when the tenant fell in arrears, they issued a termination notice under Section 19 of the Act (**Exhibit L # 3**) to terminate the tenancy on 17 May 2021. Landlord1 testified that the notice was served by email and as of the hearing date (07 June 2021), the tenant remained in the unit. Landlord1 testified that there is 1 adult and 1 child aged 14 years living in the unit.
22. There was no opportunity for mediation by the landlord.

### Tenant Position

23. The tenant did not provide comment on the matter other than to indicate that she hopes that the landlord will consider some sort of mediation to resolve the issue.

## Analysis

24. Established by undisputed statement of fact above, the rental agreement is a written 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.
25. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlords.

26. 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 05 May 2021 with a termination date of 17 May 2010. As established above and undisputed by the tenant, rent had been in arrears since January 2021. 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).
27. Sections 19. (4) 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 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.*

28. As identified above, landlord1 testified that the termination notice was served by email 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 landlords to be proper and valid. Therefore, the landlords are entitled to an order for vacant possession of the property along with an order for any and all costs associated with certifying the orders or with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

## **Decision**

30. The landlords' claim for vacant possession succeeds. The landlords are further awarded cost associated with the certification and enforcement of the Possession Order by the High Sheriff of NL.

**Summary of Decision**

31. The landlords are entitled to the following:

- a) Rent Owing .....\$3095.24
- b) **Total owing to the landlords .....\$3095.24**
- c) Vacant Possession of the Rented Premises
- d) A daily rate of rent set at **\$49.32** beginning 08 June 2021 and continuing until the day the landlords obtain vacant possession of the Rented Premises.
- e) Any incurred costs associated with certifying the attached orders
- f) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

09 June 2020

**Date**



**Michael Greene**  
**Residential Tenancies Tribunal**