

Residential Tenancies Tribunal

Decision 21-0100-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **11:00 am** on **07 April 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 the landlord, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. (*Affirmed*).
4. The details of the tenancy are a written monthly tenancy commencing 01 November 2019 with rent was set at \$685.00 with utilities excluded and a security deposit in the amount of \$278.00 collected on this tenancy on 01 November 2019.
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 affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **26 March 2021** by serving the original documents to the tenant via email: [REDACTED] and attaching the email that was sent along with verification of the email being used between the parties.
7. The matter related to the security deposit will not be addressed in this hearing as the tenancy is still ongoing.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$1790.00**;
 - 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, 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 - \$1790.00

Relevant Submissions

Landlord Position

11. The landlord stated that she had entered into a monthly rental agreement with the tenant with rent is set at \$685.00 per month and due on the 1st day of each month with a security deposit in the amount of \$278.00 collected on this tenancy on or about 01 November 2019. The landlord demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is \$2475.00 up to and including 30 April 2021. The landlord stated as of the hearing date 07 April 2021 the tenant remained in the unit and rent is outstanding.
12. The landlord testified that it has been increasingly harder and harder to get the rent from the tenant and she is fed up with it.
13. The landlord testified that there was an agreement reached (**Exhibit L # 2**) between the parties to void the termination notice (**Exhibit L # 4**) subject to conditions being met. The landlord advises that the conditions were not met, so the notice remained in place.

Tenant Position

14. The tenant acknowledged owing the arrears as claimed by the landlord. The tenant testified that she does not have the financial means to pay the rent and is currently looking for a place to live.

- 15. The tenant did argue that an agreement was reached with the landlord (**Exhibit L # 2**) that would see the termination notice void. The tenant acknowledged that she did not fulfil the conditions of the agreement.
- 16. The tenant testified that she fell on hard economic times as a result of the pandemic and ended up on social assistance, the Canadian Employment Recovery Benefit, and Employment Insurance. She stated that she couldn't pay the rent because of other bills like NL Power and currently doesn't have the money.

Analysis

- 17. 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 landlord actually owed by the tenant.
- 18. With respect to the payment agreement between the parties, the tenant is correct in stating that there was an agreement to void the termination notice subject to two payments being made. Records are clear and the tenant acknowledges that the agreement was not fulfilled on her part. The lack of fulfillment thereby voids the agreement between the parties and the termination notice would remain in place.
- 19. 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 March 2021 has not been paid leaving a balance of **\$1790.00**. Further, rent for April 2021 can only be calculated up to and including the day of the hearing (07 April 2021). That calculation is ($\$685.00 \times 12 \text{ months} = \$8220.00 \div 365 \text{ days} = \$22.52 \text{ per day} \times 7 \text{ days} = \157.64). Rent for April 1 – 7, 2021 is **\$157.64**.
- 20. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$22.52** beginning on **08 April 2021** and continuing until the day the landlord obtain vacant possession of the rented premises.

Decision

- 21. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 31 March 2021 \$1790.00
 - b) Rent owing for April 1 - 7, 2021 157.64
 - c) Total due to Landlord..... \$1947.64**
 - d) A daily rate beginning **08 April 2021**..... **\$22.52**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

22. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
23. The landlord testified that the tenant has been in arrears on an ongoing basis since December 2020. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

24. Established by undisputed fact above, the tenant was in arrears since December 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.
25. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

26. 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

27. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
28. The landlord testified that when the tenant fell in arrears, she issued a termination notice under Section 19 of the Act (**Exhibit L # 4**) to terminate the tenancy on 14 February 2021. She testified that the notice was served personally and as of the hearing date (07 April 2021), the tenant remained in the unit. The landlord testified that there are 2 adults living in the unit.

Analysis

29. 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.

30. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.
31. 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 # 4**), I find the notice was served on 03 February 2021 with a termination date of 14 February 2021. As established above and undisputed by the tenant, rent had been in arrears since December 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).
32. 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.*

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

