

Residential Tenancies Tribunal

Decision 19-0001-02

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:30 p.m. on April 8, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing by conference call.
3. The tenants, [REDACTED] and [REDACTED], hereafter referred to as the tenants. [REDACTED] attended the hearing by conference call and [REDACTED] did not attend the hearing but he was represented by [REDACTED].

Preliminary Matters

4. The landlord amended the application to include vacant possession of the unit.

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$3727.00.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case are Sections 19, 34 and 35 of the Act.

Issue 1: Payment of rent - \$3727.00

- 8. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

- 9. The landlord stated that the tenants moved into the unit on October 6, 2017 on a month to month tenancy with rent set at \$500.00 per month due on the 6th of each month. A security deposit in the amount of \$250.00 was paid on October 6, 2017.
- 10. The landlord testified the last time the tenants were paid up to date was on March 21, 2018. Since March 2018 some months the tenant would make a payment or two payments towards the rent and there were some months the tenants did not make a payment at all. In support of the claim the landlord submitted a copy of the rent ledger for the period October 6, 2017 – April 6, 2019 (LL #2).

Tenant Position

- 11. The tenant acknowledges that rent is owed and she is not disputing the amount the landlord is claiming.

Analysis

- 12. I have reviewed the testimony and evidence of the landlord and the tenant. I find the last time the rent has been up to date was on March 21, 2018 and the landlord is claiming rent up to the rent due for April 6, 2019. I also find the tenant does not dispute the amount the landlord is claiming for the rent arrears.

Decision

- 13. The landlord’s claim for rent succeeds as per the following:
 - a. Rent due up to April 6, 2019..... \$3727.00

Issue 2: Vacant Possession of the Rental Premises

14. An application for vacant possession is determined by the validity of the termination notice issued by the landlord. In this case, the termination notice was issued under Section 19 of the Act where the tenant contravenes the Act by not paying rent.

Landlord Position

15. The landlord testified a termination notice was hand delivered by Joan Brown to the tenants on February 8, 2019 (Exhibit LL #1) under Section 19 of the *Residential Tenancies Act, 2018*, to vacate on February 19, 2019 because the rent had not been paid up to date since March 21, 2018. To the date of the hearing the tenants still reside in the unit.

Tenant Position

16. The tenant testified that they have received so many termination notices that she is not sure if she received the termination notice on February 8, 2019. She said that one day when she came home a gentleman in the neighborhood handed her a termination notice that he picked up off the ground. The notice was full of mud.

Analysis

17. Section 19.(1)(b) requires that rent be overdue 5 days or more before a landlord can give a termination notice to vacate the unit not less than 10 days after the notice is served on the tenant. As determined in paragraph 13 above, the rent is in arrears. I find the notice allowed the required amount of time and contains all of the necessary information to serve on the tenant as per sections 19.(4) and (34) of the Act. However, after reviewing the testimony of the landlord and tenant, the landlord has not supported the claim with corroborating evidence that the termination notice was served on the tenants on February 8, 2019.

Decision


18. The landlord's claim for vacant possession fails.

Summary of Decision

19. The landlord is entitled to the following:

a) Rent owing..... \$3727.00

April 12, 2019
Date


Residential Tenancies Section