

Residential Tenancies Tribunal

Decision 19-0004-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:45 pm on 19 February 2019 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 and was represented by [REDACTED] – Property Manager.
3. The respondent, [REDACTED], hereafter referred to as tenant, did not participate in the hearing.
4. 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

5. The application was AMENDED at the hearing to add rent for February that has come due since the filing of the application and to reduce the total amount owing reflecting a payment by the tenant in the amount of \$900.00 on February 8, 2019. The new amount outstanding is \$855.00.
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 this hearing on the **28 January 2019** by serving the documents to the tenant personally at the rented premises and the tenant has had **21 days** to provide a response.

There was no contact information on file to contact the tenant.

7. 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

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$855.00**;
 - b) Payment of late fees
 - 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 - \$855.00

Relevant Submissions

Landlord Position

11. The landlord stated that he had entered into a one year fixed term rental agreement with the tenant which has since converted to a month to month tenancy. The agreed rent is set at \$845.00 per month and due on the 1st day of each month with a security deposit in the amount of \$590.00 collected on this tenancy on or about November 1, 2016. The landlord stated that the tenant made

a payment against the arrears on February 8, 2019 in the amount of \$920.00 and as of the hearing no rent for February 2019 was received. The landlord demonstrated the arrears with rental records (Exhibit L # 1) as total rent outstanding is \$855.00 up to and including 28 February 2019. The landlord stated as of the hearing date 19 February 2019 the tenant remained in the unit and rent is outstanding.

Analysis

12. I have reviewed the testimony and evidence of the landlord 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.
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 written rental agreement established when the tenancy began. Records are clear that rent for January 2019 has not been paid leaving a balance of **\$827.00 (see table in paragraph 14 below)**. Further, rent for February 2019 came due on February 1, 2019 however for the purpose of this decision can only be calculated up to and including the day of the hearing (19 February 2019). That calculation is $(\$845.00 \times 12 \text{ months} = \$10,140.00 \div 365 \text{ days} = \$27.78 \text{ per day} \times 19 \text{ days} = \$527.82)$. Rent for February 2019 then is **\$527.82**. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$27.78** beginning on 20 February 2019 and continuing until the day the landlord obtain vacant possession of the rented premises.
- 14.

Table #1: Extraction from Rental Records

Date	Comment	Due	Payment	Balance
	Bal. Forward from Sept 30, 18	\$ -	\$ -	\$55.00
1-Oct-18	Rent Due	\$ 835.00		(\$780.00)
19-Oct-18	Rent Payment		\$ 865.00	\$85.00
1-Nov-18	Rent Due	\$ 835.00		(\$750.00)
23-Nov-18	Late Fee Applied	\$ 75.00		(\$825.00)
23-Nov-18	Rent Payment		\$ 910.00	\$85.00
	Late Fee Over Assessment **		\$ 28.00	\$113.00
1-Dec-18	Rent Due	\$ 845.00		(\$732.00)
7-Dec-18	Payment		\$ 750.00	\$18.00
1-Jan-19	Rent Due	\$ 845.00		(\$827.00)
1-Feb-19	Rent Due	\$ 845.00		(\$1,672.00)
8-Feb-19	Late Fee Applied	\$ 75.00		(\$1,747.00)
8-Feb-19	Rent Payment		\$ 920.00	(\$827.00)

15. The landlord applied a late fee against the tenant's account on November 23, 2018 and charged an excess fee. This overcharge is adjusted as indicated in Table # 1 above and the overall amounts owing reflected accordingly. A calculated late fee for the period of November 1, 2018 to November 23, 2018 is as follows:

November 2, 18 (1 st day late @ \$5.00)	\$5.00
November 3 – 23, 18 (21 days @ \$2.00)	<u>42.00</u>
Total Late Fee	<u>\$47.00</u>

The overcharge then is \$75.00 – 47.00 = **\$28.00****

Decision

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

a) Rent owing for January 2019	\$827.00
b) Rent owing for February 1 – 19, 2019.....	<u>527.82</u>
c) Total Arrears	\$1354.82
d) LESS: Tenant Payment (Feb 8, 2019)	<u>(\$920.00)</u>
e) Total Owing.....	<u>\$434.82</u>
f) A daily rate beginning February 20, 2019	\$27.78

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

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

Analysis

19. Established by undisputed fact in paragraph 13, the tenant was in arrears since December 2018. 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. The landlord has applied a maximum late fee of \$75.00 to the tenants account as of February 1, 2019 which is the maximum allowable.

20. The issue of rental arrears has been determined in paragraph 13 above confirming that the tenant owes rent to the landlord.

Decision

21. 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

22. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
23. The landlord testified that when the tenant fell in arrears, he issued a termination notice under Section 19 of the Act (Exhibit L # 2) to terminate the tenancy on January 29, 2019. He testified that the notice was served personally and as of the hearing date (February 19, 2019), the tenant remained in the unit. The landlord testified that there is 1 adult living in the unit.

Analysis

24. Established by undisputed statement of fact in paragraph 11, the rental agreement is a written fixed term tenancy which has since converted to the month to month 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 in paragraph 13 above confirming that the tenant owes rent to the landlord.
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 # 2), I find the notice was served on January 18, 2019 with a termination date of January 29, 2019. As established in paragraph 11 and undisputed by the tenant, rent had been in arrears since December, 2018. 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 in paragraph 23, the landlord testified that the termination notice was served personally 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 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 cost associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

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

Issue 3: Hearing Expenses

Landlord Position

31. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (Exhibit L # 3). The landlord is seeking this cost.

Analysis

32. 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

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

Summary of Decision

34. The landlord is entitled to the following:

- | | | |
|-----------|--|------------------------|
| a) | Rent Owning | \$434.82 |
| b) | Late Fees | 75.00 |
| b) | Hearing Expenses | <u>\$20.00</u> |
| c) | Total Owning to the Landlord | <u>\$529.82</u> |
| d) | Vacant Possession of the Rented Premises | |
| e) | A daily rate of rent set at \$27.78 beginning February 20, 2019 and continuing until the day the landlord obtains vacant possession of the Rented Premises. | |
| f) | Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order | |

March 4, 2019

Date

[REDACTED]
Michael Greene
Residential Tenancies Tribunal