

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0006-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:45 am on 17 January 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via teleconference to the Residential Tenancies Office in Mt Pearl and to the tenant's home.
2. The landlord, [REDACTED], hereafter referred to as landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as tenant, participated 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 reduce the amount of arrears being claimed by the applicant from \$1762.50 to \$1512.50 reflecting a cash payment received from the tenant on or about January 8, 2018.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a) Payment of rent owing **\$1512.50**;
 - b) Payment of late fees
 - c) Vacant possession of the rented premises;
 - d) Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
8. 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 - \$1512.50

Relevant Submissions

Landlord Position

9. The landlord stated that he had entered into a one year fixed term rental agreement with the tenant, commencing February 1, 2018 and set to expire on January 31, 2019. The agreed rent was set at \$750.00 per month and due on the 1st day of each month with a security deposit in the amount of \$500.00 collected on this tenancy. The landlord and tenant both agreed that the security deposit was disposed of during the tenancy when the landlord applied the deposit against rent owed by the tenant. This was requested by the tenant and agreed to by the landlord. The landlord stated that no rent was received from the tenant for December 2018 and as of the hearing no rent for January 2019 was received as demonstrated in the landlord's rental records (Exhibit L # 2) as total rent outstanding is \$1512.50 up to and including 31 January 2019. The landlord stated as of the hearing date 17 January 2019 the tenant remained in the unit and rent is outstanding in the amount of \$1512.50.

Tenant Position

10. The tenant stated that she owes the rent that the landlord is claiming. The tenant stated that she is currently unable to pay the rent owed and is currently in the process of moving to a new rental premises.

Analysis

11. 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.
12. With respect to the arrears being claimed, I agree with the landlord and the acknowledgement of the tenant 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 fixed term rental agreement established when the tenancy began. Records are clear that rent for November 2018 has not been paid in the amount of **\$12.50**, rent for December 2018 has not been paid in the amount of **\$750.00**. Further, rent for January 2019 came due on January 1, 2019 however for the purpose of

this decision can only be calculated up to and including the day of the hearing (17 January 2019). That calculation is ($\$750.00 \times 12 \text{ months} = \$9000.00 \div 365 \text{ days} = \$24.66 \text{ per day} \times 17 \text{ days} = \419.22). Rent for January 2019 then is **\$419.22**. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$24.66** beginning on 18 January 2019 and continuing until the day the landlord obtain vacant possession of the rented premises.

Decision

13. The landlord's total claim for rent succeeds as follows:
- a) Rent owing for November 2018 \$12.50
 - b) Rent owing for December 2018..... 750.00
 - c) Rent owing for January 1 – 17, 2019 419.22
 - d) Total Arrears **\$1181.72**

 - e) A daily rate beginning January 18, 2019 **\$24.66**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

14. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
15. The landlord testified that the tenant has been in arrears since November 2018. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018* and the tenant has been in arrears for 78 days as of the hearing date.

The Tenant Position

16. The tenant stated that she is fine with this portion of the claim and understood the origin of the claim.

Analysis

17. Established by undisputed fact in paragraph 13, the tenant was in arrears for 78 days. 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 calculated amount would exceed the \$75.00 maximum.
18. The issue of rental arrears has been determined in paragraph 13 above confirming that the tenant owes rent to the landlord.

Decision

19. 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

20. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
21. The landlord testified that when the tenant fell in arrears, he issued a termination notice under Section 19 of the Act (Exhibit L # 3) to terminate the tenancy on January 13, 2019. He testified that the notice was served personally and as of the hearing date (January 17, 2019), the tenant remained in the unit. The landlord testified that there are 2 adults living in the unit.

Tenant Position

22. The tenant stated that she is unable to pay what is owed in arrears in one lump sum. She further added that she regrets the current situation and acknowledged receiving the termination notice from the landlord. She stated that she is currently packing to move to other accommodations.

Analysis

23. Established by undisputed statement of fact in paragraph 9, the rental agreement is a written fixed term tenancy set to expire on January 31, 2019. 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.
24. The issue of rental arrears has been determined in paragraph 13 above confirming that the tenant owes rent to the landlord.
25. 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 January 2, 2019 with a termination date of January 13, 2019. As established in paragraph 10 and undisputed by the tenant, rent had been in arrears since November, 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

26. 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 identify the technical requirements of the termination notice as identified below. 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*

28. As identified in paragraph 15 and undisputed by the tenant, the landlord testified that she served the termination notice 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 # 4). The landlord is seeking this cost.

Tenant Position

32. The tenant was fine with this request and understood the basis of the request.

Analysis

33. I have reviewed the testimony and evidence of the landlord and tenant 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

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

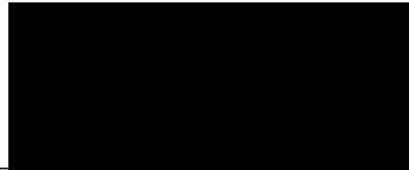
Summary of Decision

35. The landlord is entitled to the following:

- a) Rent Owing\$1181.72
- b) Late Fees 75.00
- b) Hearing Expenses \$20.00
- c) Total Owing to the Landlord\$1276.72**
- d) Vacant Possession of the Rented Premises
- e) A daily rate of rent set at **\$24.66** beginning January 18, 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

January 23, 2019

Date



Michael Greene

Residential Tenancies Tribunal