

## Residential Tenancies Tribunal

Decision 19-010-03

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:20 pm on 21 February 2019 at the Sir Richard Squires Building, 84 Mount Bernard Avenue, Corner Brook, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.
3. This adjudicator attended the hearing by teleconference.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$800.00;
  - b. An order for vacant possession of the rented premises.

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are Sections 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

### Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach him by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a)

respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date 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 has been properly served. The landlord submitted an affidavit with his application stating that the tenant was served with notice of the hearing on 29 January 2019 and he has had 22 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

8. The landlord amended his application at the hearing and stated that he was seeking an additional \$1400.00 in rent for a total claim of \$2200.00.

### **Issue 1: Rent Owing - \$2200.00**

#### **Relevant Submissions**

##### The Landlords' Position

9. The landlord stated that he had entered into a monthly rental agreement with the tenant, commencing 07 December 2018. The agreed rent was set at \$1400.00 per month.
10. The landlord testified that the tenant had paid a pro-rated rent of \$1100.00 for December 2018 and that he had only paid \$600.00, on 11 January 2019, towards the rent for January 2019. No other payments have been made since.
11. The landlord is seeking an order for a payment of the remaining \$800.00 owing for January 2019 as well as a payment of \$1400.00 for February 2019.

#### **Analysis**

12. I accept the testimony of the landlord and I find that the tenant has not paid rent as required. As the landlord is also seeking an order for vacant possession of the rental unit, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate the rent owing to the date of the hearing to be \$1766.63 (\$800.00 owing for January 2019 and \$966.63 for February 2019 (\$1400.00 per month x 12 months = \$16800.00 per year ÷ 365 days = \$46.03 per day x 21 days = \$966.63)).

#### **Decision**

14. The landlord's claim for a payment of rent succeeds in the amount of \$1766.63.

15. The tenant shall pay a daily rate of rent in the amount of \$46.03, beginning 22 February 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

## **Issue 2: Vacant Possession**

### **Relevant Submissions**

#### The Landlords' Position

16. With his application, the landlord submitted a copy of a termination notice (LB #2) which he stated he had taped to the tenant's door on 28 January 2019.
16. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 08 February 2019.
17. The landlord is seeking an order for vacant possession of the rented premises.

### **Analysis**

18. Section 19 of the *Residential Tenancies Act, 2018* states:

#### ***Notice where failure to pay rent***

**19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**

...

**(b) where the residential premises is**

**(i) rented from month to month,**

**(ii) rented for a fixed term, or**

**(iii) a site for a mobile home, and**

***the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.***

19. According to the testimony and evidence submitted at the hearing, on 28 January 2019 the tenant was in arrears in the amount of \$800.00 and had been in arrears since the beginning of that month. The tenant has made no payments to the landlord since the notice was issued and since that time the rent for February 2019 has also come due.

20. As the notice meets the timeframe requirements set out in section 19 of the *Act* it is a valid notice.

### **Decision**

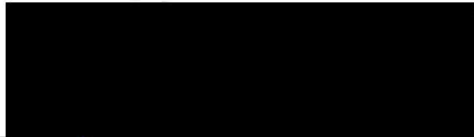
21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

### **Summary of Decision**

23. The landlord is entitled to the following:
- A payment of rent in the amount of \$1766.63
  - A payment of a daily rate of rent in the amount of \$46.03, beginning 22 February 2019 and continuing to the date the landlord obtains possession of the rental unit,
  - An order for vacant possession of the rented premises,
  - The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

25 February 2019

Date



John R. Cook  
Residential Tenancies Tribunal