

Residential Tenancies Tribunal

Decision 19-0011-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 20 February 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant did not participate in the hearing.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$1100.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$500.00 was collected on or about March 1, 2018 and the landlord issued a termination notice dated February 7, 2019 for the intended termination date of February 18, 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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 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 **07 February 2019** by serving the documents to the tenant personally at the rental address. The tenant has had **17 days** to provide a response.

Contact with the tenant was not attainable prior to the hearing.

As the tenant was properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing in the tenant's absence.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$600.00**
 - c) Payment of late fees **\$75.00**
 - d) Hearing expenses

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. 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 - \$600.00

Relevant Submissions

Landlord Position

10. The landlord stated that he had entered into a written rental agreement with the tenant, commencing March 1, 2018. The agreed rent was set at \$1100.00 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 issued a termination notice (Exhibit L # 2) for the intended date of February 18, 2019. The landlord stated that not all rent was received from the tenant for February 2019 with the balance outstanding being \$600.00 up to and including 28 February 2019. The landlord stated as of the hearing date 20 February 2019 rent remains outstanding.

Analysis

11. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one 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 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 February 2019 came due on February 1, 2019 and a payment of \$500.00 was received from the tenant on February 4, 2019. Rent can only be awarded up to and including the hearing date and is calculated as $(\$1100.00 \times 12 \text{ months} = \$13,200.00 \div 365 \text{ days} = \$36.16 \text{ per day} \times 20 \text{ days} = \$723.20)$. Rent for February 1 – 20, 2019 then is **\$723.20**.
13. Respective of the rent for the remainder of the month of February 2019, the landlord is further awarded a daily rate of rent in the amount of \$36.16 commencing on February 21, 2019 and continuing until the day the landlord obtains vacant possession of the property.

Decision

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

- a) Rent owing for February 1 - 20, 2019..... \$723.20
- b) **LESS: Tenant Payment (February 4, 2019) (500.00)**
- c) Total Arrears **\$223.20**

d) The landlord is awarded a daily rate of rent in the amount of \$36.16 beginning on February 21, 2019 and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

- 15. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
- 16. The landlord testified that the tenant has been in arrears since February 1, 2019. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

17. Established by undisputed fact in paragraph 12, the tenant was in arrears for the month of February 2019. 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.

18. The calculated amount is as follows:

- a. February 2, 2019 (1st day Late @ \$5.00): \$5.00
- b. February 3 – 20, 2019 (18 days @ \$2.00): 36.00
- c. **Total Late Fees Owing** **\$41.00**

19. The issue of rental arrears has been determined in paragraph 14 above confirming that the tenant owes rent to the landlord.

Decision

20. The landlord's claim for late fees succeeds in the amount of \$41.00 as calculated up to and including the hearing date (February 20, 2019).

Issue 3: Hearing Expenses

Landlord Position

21. 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

22. 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

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

Issue 4: Vacant Possession of the Rented Premises

Landlord Position

24. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
25. The landlord testified that the tenant is in rental arrears and indicated that a notice to terminate was issued under Section 19 of *the Act* (Exhibit L # 2) to terminate the tenancy on February 18, 2019. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on February 7, 2019. The landlord indicated that as of the hearing date (February 20, 2019), the tenant remained in the unit. The landlord further testified that to the best of his knowledge, there is 1 adult and 2 minor children living in the unit.

Analysis

26. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19 (4) and 34 as well as the service requirements identified in section 35.
27. The issue of non-payment of rent has been outlined and established by the testimony of the landlord along with documentary evidence presented by the landlord. I accept the evidence of the landlord and find that the tenant does owe rent as described in this decision above.

28. Section 19 (1)(b) requires that when a premises is rented for month to month and the tenant's rent is overdue for 5 days or more, the landlord may terminate the tenancy and the tenant is required to vacate the residential premises on a date not less than 10 days after the notice has been served. On examination of the termination notice issued and submitted into evidence (Exhibit L # 2), I find the notice was served on February 7, 2019 with a termination date of February 18, 2019. As established in paragraph 12, the tenant owes rent which is in contravention of *The Act* and rental agreement between both parties. I further find that as the date of termination identified on the notice is at least 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).
29. 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*
- (d) state the section of this Act under which the notice is given.*

30. As identified in paragraph 25, the landlord testified that he served the termination notice personally which is a permitted method of service identified under section 35.

31. 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 costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

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

Summary of Decision

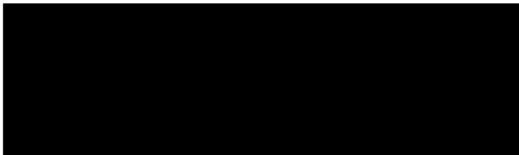
32. The landlord is entitled to the following:

- a) Rent Owing (up to and including Feb 20, 2019).....\$223.20
- b) Late Fees.....41.00
- b) Hearing Expenses \$20.00
- c) **Total owing to Landlord****\$284.20**

- d) **A daily rate of rent in the amount of \$36.16 beginning February 21, 2019.**
- e) **An order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.**

March 1, 2019

Date



Michael Greene
Residential Tenancies Tribunal