

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-012-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 29 January 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. [REDACTED], hereinafter referred to as “the tenant”, did not participate.

Issues before the Tribunal

3. The landlords are seeking the following:
 - a. An order for a payment of rent in the amount of \$1100.00;
 - b. An order for a payment of late fees in the amount of \$75.00;
 - c. An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are Sections 15, 19 and 35 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her 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 she has been properly served. Landlord1 testified that the tenant was electronically served with notice of the hearing on 17 January 2019 and she has had 11 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.

7. Landlord1 amended the landlords' application at the hearing and stated that they were now only seeking \$1000.00 in rental arrears.

Issue 1: Rent Owing - \$1000.00

Relevant Submissions

The Landlords' Position

8. Landlord1 stated that the landlords had entered into a monthly rental agreement with the tenant on 01 October 2016 and the agreed rent was set at \$1100.00 per month. \$700.00 of that amount was to be paid, on the tenant's behalf, by the Department of Advanced Education, Skills and Labour (AESL) on the 1st day of the month and the remaining \$400.00 was to be paid by the tenant on the 20th day of each month.
9. Landlord1 and landlord2 each testified that for the period ending 31 January 2019 they have received all of the agreed payments from AESL but they have only received 3 payments from the tenant since September 2018. Landlord1 submitted copies of the INTERAC e-Transfers sent by the tenant showing that they had received \$200.00 on 03 December 2018, \$300.00 13 December 2018 and \$100.00 on 16 January 2019.
10. According to landlord1's calculations, the tenant owes \$1000.00 for the period running from 01 October 2018 to 31 January 2019 (4 months x \$400.00 per month = \$1600.00 less the payments totaling \$600.00).

Analysis

11. The testimony and evidence submitted at the hearing establishes that the tenant has not paid rent as required. As the landlords are also seeking an order for vacant possession of the rental unit, I find that they are entitled to a payment of rent to the date of the hearing and a per diem thereafter.
12. I calculate the rent owing to the date of the hearing to be \$948.64 (\$700.00 owing for the period ending 31 December 2018 and \$248.64 for January 2019 (\$1100.00 per month x 12 months = \$13,200.00 per year ÷ 365 days = \$36.16

per day x 29 days = \$1048.64 less the payments of \$700.00 received from AESL on 01 January 2019 and the \$100.00 payment received from the tenant on 16 January 2019)).

Decision

13. The landlords' claim for a payment of rent succeeds in the amount of \$948.64.
14. The tenant shall pay a daily rate of rent in the amount of \$36.16, beginning 30 January 2019, and continuing to the date the landlords obtain vacant possession of the rented premises.

Issue 2: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

15. The landlords have assessed late fees in the amount of \$75.00.

Analysis

16. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

17. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

Decision

18. As the tenant has been in arrears since 21 October 2018, the landlords are entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

19. With their application, the landlords submitted a termination notice and landlord1 testified that she had sent a digital photograph of that notice to the tenant via text-message.
20. At the hearing, landlord1 submitted into evidence a copy of that text-message exchange with the tenant showing that the notice had been sent to her on 07 January 2019.
21. The termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 18 January 2019.
22. The landlords are seeking an order for vacant possession of the rented premises.

Analysis

23. 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.

24. Section 35.(2) of this *Act* outlines the methods by which notices may be served by landlords on tenants and the relevant subsection states:

Service of documents

35. (2) *A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by*

...

(f) sending it electronically where

(i) it is provided in the same or substantially the same form as the written notice or document,

(ii) the tenant has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address

25. According to the testimony and evidence submitted at the hearing, on 07 January 2019 the tenant was in arrears in the amount of \$700.00 and had been in arrears since 21 October 2018. The tenant has only made 1 payment since the notice was issued--\$100.00 on 16 January 2019—but she failed to bring the balance to zero prior to the effective termination date set out in the notice: 18 January 2019.
26. As the notice meets the timeframe requirements set out in section 19 of the *Act* and as it was properly served in accordance with section 35, it is a valid notice.

Decision

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

Issue 4: Hearing Expenses

29. Landlord1 submitted a receipt showing that the landlords had paid a fee of \$20.00 to file this application. As the landlords' claim has been successful, the tenant shall pay this hearing expense.

Issue 5: Security Deposit

30. Landlord1 testified that the tenant paid a security deposit of \$540.00 on 22 September 2016. As the landlords' claim has been successful, they shall retain the security deposit as outlined in this decision and order.


Summary of Decision

31. The landlords are entitled to the following:

- A payment of \$503.64, determined as follows
 - a) Rent Owing\$948.64
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) LESS: Security Deposit..... (\$540.00)
 - e) Total Owing to Landlord\$503.64
- A payment of a daily rate of rent in the amount of \$36.16, beginning 30 January 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 landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

05 February 2019

Date



John R. Cook
Residential Tenancies Tribunal