

Residential Tenancies Tribunal

Decision 19-0035-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:40 am on 07 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 teleconference to the Residential Tenancies Office in Mt Pearl.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing.
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$850.00 per month and due on the 1st of each month. A security deposit in the amount of \$125.00 was collected on the tenancy on or about October 1, 2018. The landlord indicated that a termination notice was issued to the tenant on January 16, 2019 for the intended termination date of January 27, 2019.
5. 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

6. The application was AMENDED at the hearing to increase the amount of arrears being claimed by the applicant from \$1540.00 to \$2390.00 reflecting rent that has come due for February 2019 since the filing of the application.

7. 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 **25 January 2019** by serving the documents to the tenant via email to the address [REDACTED] and providing verification that the documents were sent to this address. The tenant has had **12 days** to provide a response.

A phone call was placed to the tenant at the number on file [REDACTED]. A female answered the phone and passed the line to [REDACTED]. The [REDACTED] whom answered, indicated he had no idea what I was referring to and that he did not live on [REDACTED]. He also indicated his email address, which matched the above address. Further, he indicated he hadn't checked his email recently. I am satisfied that the notice of the application and hearing has come to the attention of the respondent or would have come to the attention of the respondent if not for the respondents efforts to evade service.

8. 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

9. The landlord is seeking the following:
 - a) Payment of rent owing **\$2390.00**;
 - b) Vacant possession of the rented premises;
 - c) Hearing expenses.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. 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 - \$2390.00

Relevant Submissions

Landlord Position

12. The landlord stated that he had entered into a verbal rental agreement with the tenant, commencing October 1, 2108. The agreed rent was set at \$850.00 per month and due on the 1st day of each month with a security deposit in the amount of \$125.00 collected on this tenancy. The landlord stated that rent was received sporadically with the last payment received by e-transfer on November 7, 2018 in the amount of \$250.00. The landlord supplied the rental records (Exhibit L # 1) which is a series of e-transfers for the payments received from the tenant. The landlord stated as of the hearing date 07 February 2019 the tenant remained in the unit and rent was outstanding in the amount of \$2390.00 as claimed by the landlord up to February 28, 2019.

Analysis

13. 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.
14. 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 verbal rental agreement established when the tenancy began. The amount being claimed by the landlord and the amount owed as calculated from the records differ slightly. The calculated amount is shown in the table below (Table # 1). Records are clear that rent is owed for the period ending January 31, 2019 in the amount of **\$1700.00**. 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 (07 February 2019). That calculation is $(\$850.00 \times 12 \text{ months} = \$10,200.00 \div 365 \text{ days} = \$27.95 \text{ per day} \times 7 \text{ days} = \$195.65)$. Rent for February 2019 then is **\$195.65**. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$27.95** beginning on 08 February 2019 and continuing until the day the landlord obtain vacant possession of the rented premises.

15. Table # 1: Rent Calculations from Records supplied in (Exhibit L # 1)

Date	Comment	Due	Payment	Balance
	Bal. from Sept 1, 2018	\$ -	\$ -	\$ -
	Security Deposit	\$ 125.00		\$ (125.00)
14-Sep-18	E-Transfer		\$ 200.00	\$ 75.00
29-Sep-18	E-Transfer		\$ 625.00	\$700.00
29-Sep-18	E-Transfer		\$ 150.00	\$850.00
1-Oct-18	Rent Due	\$ 850.00		\$0.00
24-Oct-18	E-Transfer		\$ 350.00	\$350.00
1-Nov-18	E-Transfer		\$ 250.00	\$600.00
1-Nov-18	Rent Due	\$ 850.00		(\$250.00)
7-Nov-18	E-Transfer		\$ 250.00	\$0.00
1-Dec-18	Rent Due	\$ 850.00		(\$850.00)
1-Jan-19	Rent Due	\$ 850.00		(\$1,700.00)
1-Feb-19	Rent Due	\$ 850.00		(\$2,550.00)

The landlord has indicated that \$125.00 of the payments was for a security deposit leaving a balance of rent outstanding in the amount of \$2550.00.

Decision

16. The landlord's total claim for rent succeeds as follows:
- a) Rent owing up to January 31, 2019 \$1700.00
 - b) Rent owing for February 1 – 7, 2019 195.65
 - c) Total Arrears **\$1895.65**
 - d) A daily rate beginning February 8, 2019 **\$27.95**

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

17. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
18. 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 16, 2019. He testified that the notice was served by posting it on the rented premises door and as of the hearing date (February 7, 2019), the tenant remained in the unit. The landlord testified that there are 2 adults living in the unit.

Analysis

19. Established by undisputed statement of fact in paragraph 11, the rental agreement is a verbal monthly tenancy with a rental rate of \$850.00 per month. 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.
20. The issue of rental arrears has been determined in paragraph 13 above confirming that the tenant owes rent to the landlord.
21. 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 16, 2019 with a termination date of January 27, 2019. As established in paragraph 14, rent had been in arrears since December 2, 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).
22. Sections 19. (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find that 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.*

23. As identified in paragraph 17, the landlord testified that he served the termination notice personally which is a permitted method of service identified under Section 35.
24. 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

25. 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

26. 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

27. 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

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

Summary of Decision

29. The landlord is entitled to the following:

- a) Rent Owing\$1895.65
- b) Hearing Expenses \$20.00
- c) Total Owing to the Landlord\$1915.65**
- d) Vacant Possession of the Rented Premises
- e) A daily rate of rent set at **\$27.95** beginning February 8, 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

February 15, 2019

Date



Michael Greene
Residential Tenancies Tribunal