

## Residential Tenancies Tribunal

Decision 19-062-05

John. R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:20 am on 12 February 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", participated by teleconference.

### Issues before the Tribunal

3. The landlords are seeking the following:
  - a. An order for a payment of rent in the amount of \$1600.00;
  - 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 and 19 of the *Residential Tenancies Act, 2018*.

### Preliminary Matters

6. Landlord1 amended the landlords' application at the hearing and stated that they were now seeking an additional \$1300.00 in rental arrears, for a total claim of \$2900.00.

## **Issue 1: Rent Owing - \$2900.00**

### **Relevant Submissions**

#### The Landlords' Position

7. With their application the landlords submitted a rental agreement showing that they had entered into a monthly rental agreement with the tenant commencing 01 December 2018. The agreed rent was set at \$1300.00 and the tenant paid a security deposit of \$700.00.
8. Landlord1 stated that she had only received 1 payment from the tenant since he moved in—a payment of \$1000.00, by INTERAC e-Transfer, on 04 December 2018.
9. The landlords are seeking a payment of the remaining rent for December 2018, \$300.00, as well as a payment of the full rent of \$1300.00 for each of January and February 2019, for a total claim of \$2900.00.

#### The Tenant's Position

10. The tenant did not dispute the landlords' claim and he acknowledged that he owed the rent for December 2018, January 2019 and February 2019.

### **Analysis**

11. As the landlords' claim was not contested by the tenant, I find that their claim succeeds. 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 \$2112.88 (\$1600.00 for the period ending 31 January 2019 and \$512.88 for February 2019 (\$1300.00 per month x 12 months = \$15600.00 per year ÷ \$42.74 per day x 12 days = \$512.88)).

### **Decision**

13. The landlords' claim for a payment of rent succeeds in the amount of \$2112.88.
14. The tenant shall pay a daily rate of rent in the amount of \$42.74, beginning 13 February 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 02 December 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 it was posted to the tenant's door on 07 January 2019.
20. 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.

21. The landlords are seeking an order for vacant possession of the rented premises.

### The Tenant's Position

22. The tenant acknowledged that he had received the notice on 07 January 2019.

### **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. According to the testimony and evidence submitted at the hearing, on 07 January 2019 the tenant was in arrears in the amount of \$1600.00 and had been in arrears since 02 December 2018. The tenant has made no payments to the landlords since the notice was issued and since then, rent for February 2019 has also come due.

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

### **Decision**

26. The landlords' claim for an order for vacant possession of the rented premises succeeds.

27. 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: Security Deposit

28. The tenant paid a security deposit of \$700.00 on 18 November 2018 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlords' claim has been successful, they shall retain the security deposit as outlined in this decision and order


#### Summary of Decision

29. The landlords are entitled to the following:

- A payment of \$1487.88, determined as follows
  - a) Rent Owing .....\$2112.88
  - b) Late Fees .....\$75.00
  - c) LESS: Security Deposit..... (\$700.00)
  - d) Total Owing to Landlords .....\$1487.88
- A payment of a daily rate of rent in the amount of \$42.74, beginning 13 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 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.

14 February 2019

Date

  
John R. Cook  
Residential Tenancies Tribunal