

## Residential Tenancies Tribunal

[REDACTED] Decision 19-066-05

John. R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:15 am on 19 February 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$1000.00;
  - b. 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 19 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. 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 31 January 2019 and he has had 19 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.

7. The landlord amended his application at the hearing and stated that he was seeking an additional \$900.00 in rent for a total claim of \$1900.00.

## **Issue 1: Rent Owing - \$1900.00**

### **Relevant Submissions**

#### The Landlords' Position

8. The landlord stated that he had entered into a monthly rental agreement with the tenant, commencing 01 August 2018, and a copy of that executed agreement was submitted with his application. The agreed rent was set at \$900.00 per month and it is acknowledged in the agreement that the tenant paid a security deposit of \$450.00.
9. The landlord submitted a copy of the INTERAC e-Transfers he had received from the tenant since he moved into the unit. This document shows that the tenant's rent was paid and up-to-date for period ending 30 November 2018. The last payment the landlord received was for \$800.00 on 28 December 2018, leaving him a balance of \$100.00 for that month. No payments have been made since.
10. The landlord is seeking an order for a payment of the remaining \$100.00 owing for December 2018 as well as a payment of \$900.00 in rent for each of January and February 2019.

### **Analysis**

11. The testimony and evidence submitted at the hearing establishes 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.
12. I calculate the rent owing to the date of the hearing to be \$1562.21 (\$1000.00 for the period ending 31 January 2019 (\$100.00 for December 2018 and \$900.00 for January 2019) and \$562.21 for February 2019 (\$900.00 per month x 12 months \$10800.00 per year ÷ \$29.59 per day x 19 days = \$562.21)).

## Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$1562.21.
14. The tenant shall pay a daily rate of rent in the amount of \$29.59, beginning 20 February 2019, and continuing to the date the landlord obtain vacant possession of the rented premises.

## Issue 2: Vacant Possession of the Rented Premises

### Relevant Submissions

#### The Landlords' Position

15. With his application, the landlord submitted a copy of a termination notice which he stated he had taped to the tenant's door on 18 January 2019. The landlord also submitted into evidence a copy of photograph showing that notice taped to the door.
16. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 29 January 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 18 January 2019 the tenant was in arrears in the amount of \$1000.00 and had been in arrears since 02 December 2018. The tenant has made no payments to the landlord since the notice was issued and the balance remained at \$1000.00 on the effective termination date set out in that notice.
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.

### **Issue 3: Security Deposit**

30. The landlord testified that the tenant paid a security deposit of \$450.00 on 01 August 2018 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

### **Summary of Decision**

31. The landlord is entitled to the following:
  - A payment of \$503.64, determined as follows
    - a) Rent Owing .....\$1562.21
    - b) **LESS: Security Deposit..... (\$450.00)**
    - c) Total Owing to Landlord.....\$1112.21
  - A payment of a daily rate of rent in the amount of \$29.59, beginning 20 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