

## Residential Tenancies Tribunal

Decision 19-0081-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:20 pm on 19 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 landlord1, participated in the hearing. The landlord, [REDACTED], hereafter referred to as landlord2, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as tenant, did not participate in the hearing.
4. The details of the claim were presented as a written fixed term rental agreement set to expire on August 31, 2019. Rent was set at \$850.00 per month and due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$415.00 was collected on the tenancy on or about September 1, 2018. The landlord indicated that a termination notice was issued to the tenant on February 4, 2019 for the intended termination date of February 10, 2019 under Section 24 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 landlords called a witness who appeared in person at the Mt. Pearl Residential Tenancies Office. The witness was [REDACTED] – **Affirmed**, here after referred to as **CW**, and is the tenant living upstairs from the respondent.
7. 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 landlords show that the tenant was served with the notice of this hearing on the **05 February 2019** by serving the documents to the tenant personally at the address of [REDACTED]. The tenant has had **13 days** to provide a response.

There was no contact information on file for the tenant.

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 applicants, I proceeded with the hearing in the tenant's absence.

## Issues before the Tribunal

9. The landlords are seeking the following:
  - a) Payment of rent owing **\$550.00**;
  - 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, 24, 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 - \$550.00

### Relevant Submissions

#### Landlord Position

12. Landlord1 stated that they had entered into a fixed term rental agreement with the tenant, commencing September 1, 2108 and set to terminate August 31, 2019. The agreed rent was set at \$850.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$415.00 collected on this tenancy. Landlord1 stated that they are seeking the balance owing for February 2019 in the amount of \$550.00. The landlord supplied the rental records (Exhibit L # 1) which is a series of rental receipts. Landlord1 stated that as of the hearing date 19 February 2019 the tenant remained in the unit and rent was outstanding in the amount of \$550.00 as claimed by the landlords up to February 28, 2019.

#### Analysis

13. I have reviewed the testimony and evidence of the landlords 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 landlords actually owed by the tenant.
14. With respect to the arrears being claimed, I agree with the landlords 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 written rental agreement established when the tenancy began. Records are clear that rent is owed for February 2019, however for the purpose of this decision rent can only be calculated up to and including the day of the hearing (19 February 2019). That calculation is ( $\$850.00 \times 12 \text{ months} = \$10,200.00 \div 365 \text{ days} = \$27.95 \text{ per day} \times 19 \text{ days} = \$531.05$ ). Rent for February 2019 then is **\$531.05** less the tenant payment of \$300.00 on February 1, 2019. The total outstanding for February 1 – 19, 2019 is **\$231.05.**
15. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$27.95** beginning on 20 February 2019 and continuing until the day the landlords obtain vacant possession of the rented premises.

## Decision

16. The landlords' total claim for rent succeeds as follows:

- a) Rent owing for February 1 – 19, 2019..... \$231.05
- b) Total Arrears ..... **\$231.05**
- c) A daily rate beginning February 20, 2019 ..... **\$27.95**

### Issue 3: Vacant Possession of the Rented Premises

#### Landlord Position

17. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
18. Landlord1 testified that they have received several complaints concerning noise and violence going on in the lower unit of the property. Landlord1 testified that the tenant had requested that another person (an unknown male) move into the property with her and that permission was not granted. Landlord 1 stated that since Christmas the tenant has had another male person living in the unit who is creating the bulk of the disturbance complaints.
19. Landlord1 stated that from the time the tenant moved into the property, there has been a consistent and continual amount of noise coming from the property. The landlord called witness CW who confirmed that there is a constant and continual amount of noise from arguing, slamming doors at all hours in the night coming from the lower unit. The witness testified that the male from the lower unit comes up on his back deck taking old cigarette butts from his butt can. Further, the witness testified that he suspects the male from the lower unit has broken into his personal vehicle and he has filed a complaint with the Royal Newfoundland Constabulary (RNC), which remains an open investigation. Lastly the witness stated that the tenant's son also comes by the property at all hours in the night banging on the door to get into the property. The witness testified that this is also disturbing and awakens him at night.
20. Landlord1 testified that a notice to terminate was issued under Section 24 of *the Act* (Exhibit L # 3) to terminate the tenancy on February 10, 2019. Landlord1 testified that the notice to terminate was served by Landlord1 to the tenant by posting a copy of the notice to the main entrance of the rented premises at or about 3:00 pm on February 4, 2019. Landlord1 testified that later that evening he drove by the property and noticed that the termination notice was removed. Landlord1 testified that as of the hearing date (February 19, 2019), the tenant remained in the unit. The landlords further testified that to the best of their knowledge, there are 2 adults living in the unit.

## Analysis

21. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24 (1), 10(1) 7(a) and 34 as well as the service requirements identified in section 35.
22. The issue of interference of peaceful enjoyment and reasonable privacy of the landlord and/or adjacent tenants has been outlined and established by the testimony of both the landlords and the landlord witness, CW, in paragraphs 18-20 above. I accept the evidence of the landlords and note that a continual pattern of yelling and screaming between the tenant and a guest in addition to the guest entering onto the adjacent tenants back deck and going through the discarded cigarette butt tin is not an accepted behavior when other tenants are living in the same dwelling building. The social norm is to respect the privacy and peaceful enjoyment of others and not subject other tenants to a sense of insecurity and violent actions. I find that the tenant has interfered with both the peaceful enjoyment and reasonable privacy of the landlords and the adjacent tenant beyond the socially accepted norms.
23. Section 24(2) requires that when a tenant contravenes statutory condition 7(a) as set out in section 10(1) of *The Act*, the landlords may terminate the tenancy and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served. On examination of the termination notice issued and submitted into evidence (Exhibit L # 3), I find the notice was served on February 4, 2019 with a termination date of February 10, 2019. As established in paragraph 22, the tenant is in contravention of statutory condition 7(a) of *The Act*. I further find that as the date of termination identified on

### *section 24 (2)*

*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.*

the notice is at least 5 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 24 (2). Sections 24 (2) 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.

24. As identified in paragraph 20, landlord1 testified that he served the termination notice by posting it on the main entry door of the rented premises which is a permitted method of service identified under section 35.
25. According to the reasons identified above, I find that the termination notice issued by the landlords to be proper and valid. Therefore, the landlords are 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**

26. The landlords' claim for vacant possession succeeds. The landlords are further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

### **Issue 3: Hearing Expenses**

#### Landlord Position

27. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (Exhibit L # 4). The landlords are seeking this cost.

### **Analysis**

28. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlords 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**

29. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

## Summary of Decision

30. The landlords are entitled to the following:

- a) Rent Owing .....\$231.05
- b) Hearing Expenses ..... 20.00
- c) Total Owing to the Landlords .....\$251.05**
- d) Vacant Possession of the Rented Premises
- e) A daily rate of rent set at **\$27.95** beginning February 20, 2019 and continuing until the day the landlords obtain 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 21, 2019

**Date**



**Michael Greene**  
**Residential Tenancies Tribunal**