

## Residential Tenancies Tribunal

Decision 19-0028-01

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:45 pm on 14 May 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador. The hearing was conducted via teleconference on the Bell Alliant Conferencing System.
2. The landlord, [REDACTED], hereafter referred to as the landlord, was represented at the hearing by, [REDACTED] – Property Manager.
3. The tenant, [REDACTED], hereafter referred to as the tenant1, did not participate in the hearing.
4. The tenant, [REDACTED], hereafter referred to as the tenant2, did not participate in the hearing.
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$950.00 per month and due on the 1<sup>st</sup> of each month. No security deposit was collected on the tenancy. The landlord indicated that a termination notice was issued to the tenant on 2 April 2019 for the intended termination date of 13 April 2019.
6. 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

7. The application was AMENDED at the hearing to increase the amount of arrears being claimed by the applicant from \$3200.00 to \$7950.00 reflecting rent that has been carried forward from 2018.

8. 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 tenant1 was served with the notice of this hearing on the **24 April 2019** by serving the documents to tenant1 via email to the address [REDACTED] and providing verification (copies of the email) that the documents were sent to this address. Tenant1 has had **19 days** to provide a response. The landlord was provided this email through a text message from the tenant.

The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **24 April 2019** by serving the documents to tenant2 via email to the address [REDACTED] and providing verification (copies of the email) that the documents were sent to this address. Tenant2 has had **19 days** to provide a response. The landlord was provided this email through a text message from the tenant.

A phone call was placed to the tenants at the number on file [REDACTED]. There was no answer and a message was left concerning the hearing.

9. As the tenants were 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 tenants' absence.

### **Issues before the Tribunal**

10. The landlord is seeking the following:
  - a) Payment of rent owing **\$7950.00**;
  - b) Vacant possession of the rented premises;
  - c) Hearing expenses.

### **Legislation and Policy**

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. 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 - \$7950.00

### Relevant Submissions

#### Landlord Position

13. The landlord representative stated that the tenancy was a written rental agreement with the tenants, commencing 1 January 2018. The agreed rent was set at \$950.00 per month and due on the 1<sup>st</sup> day of each month with no security deposit collected on this tenancy. The landlord representative stated that rent was received sporadically with the last payment received by on 7 January 2019 in the amount of \$6000.00. The landlord representative supplied the rental records (Exhibit L # 1) which is a rent ledger for the payments received from the tenants. The landlord rep stated as of the hearing date 14 May 2019 rent was outstanding in the amount of \$7950.00 as claimed by the landlord up to 31 May 2019.

#### Analysis

14. 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 tenants.
15. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenants 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 the period ending 3 April 2019 in the amount of **\$7000.00**. Further, rent for May 2019 came due on 1 May 2019 however, for the purpose of this decision can only be calculated up to and including the day of the hearing (14 May 2019). That calculation is ( $\$950.00 \times 12 \text{ months} = \$11,400.00 \div 365 \text{ days} = \$31.23 \text{ per day} \times 14 \text{ days} = \$437.22$ ). Rent for May 2019 then is **\$437.22**. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$31.23** beginning on 15 May 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

#### Decision

16. The landlord's total claim for rent succeeds as follows:
- a) Rent owing up to April 30, 2019 ..... \$7000.00
  - b) Rent owing for May 1 – 14, 2019 ..... 437.22
  - c) Total Arrears ..... **\$7437.22**
  
  - d) A daily rate beginning May 15, 2019 ..... **\$31.23**

### 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 representative testified that when the tenants fell in arrears, they issued a termination notice under section 19 of the Act (**Exhibit L # 3**) to terminate the tenancy on 13 April 2019. She testified that the notice was served by sending it via text message to [REDACTED] and posting a copy to the rental unit door on 2 April 2019 and as of the hearing date (14 May 2019), the tenant remained in the unit. The landlord Representative testified that there are 2 adults and 1 child aged 17 years living in the unit.

#### **Analysis**

19. Established by undisputed statement of fact in paragraph 13, the rental agreement is a written monthly tenancy with a rental rate of \$950.00 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 15 above confirming that the tenants owe 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 # 3), I find the notice was served on 02 April 2019 with a termination date of 13 April 2019. As established in paragraph 15, rent had been in arrears since October 2018. As rent had been in arrears for 8 and ½ months, 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 18, the landlord testified that the termination notice was served by text message to [REDACTED] and a copy was posted to the rental unit door on 02 April 2019, which are permitted methods of service identified under Section 35. The landlord indicated that messaging was a normal method of communication and presented a communication series via text to the cell number [REDACTED] to establish this fact.
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 # 4**). The landlord also paid a fee for a courier service to deliver claim documents and paid \$36.35 (**Exhibit L # 5**). The landlord is seeking these costs.

**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 within Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find the tenants are responsible to cover these reasonable expenses.

**Decision**

- 28. The tenants shall pay the reasonable expenses of the landlord in the amount of \$56.35.

**Summary of Decision**

- 29. The landlord is entitled to the following:
  - a) Rent Owning .....\$7437.22
  - b) Hearing Expenses ..... \$56.35
  - c) **Total Owning to the Landlord** .....**\$7493.57**
  - d) Vacant Possession of the Rented Premises
  - e) A daily rate of rent set at **\$31.23** beginning 15 May 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

30 May 2019  
\_\_\_\_\_  
Date

[REDACTED]

\_\_\_\_\_  
**Michael Greene**  
**Residential Tenancies Tribunal**