

Residential Tenancies Tribunal

Decision 19-0030-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 04 February 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord was represented by [REDACTED], Housing Officer.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$149.00 per month and due on the 1st of each month. There was no security deposit collected on the tenancy. The landlord issued a termination notice dated 14 November 2019 for the intended termination date of 25 November 2019 under Section 19 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 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 landlord shows that the tenant was served with the notice of this hearing on the **29 November 2019** by serving the documents to the tenant at the email: [REDACTED]. The tenant has had **66 days** to provide a response.

It should be noted that this hearing was re-scheduled by the Residential Tenancies Office due to weather in the [REDACTED] Region. Service of the Notice of re-scheduled hearing was completed by the Residential Tenancies Office for the 04 February 2020 hearing.

Phone contact was attempted to the tenant prior to the hearing with the following results:

[REDACTED]: No Answer, message left for the tenant to call the conference line.

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.

7. The landlord amended the claim at the onset to increase the amount being claimed to \$1355.70 reflecting rent that has come due and payments made since the filing of the claim.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$1355.70**
 - c) Hearing expenses

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. 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 - \$1355.70

Relevant Submissions

Landlord Position

11. The landlord stated that the parties entered into a written rental agreement with the tenant, commencing 17 October 2018. The agreed rent was set at \$149.00 per month and due on the 1st day of each month with no security deposit collected on this tenancy. The landlord issued a termination notice (**Exhibit L # 3**) for the intended date of 25 November 2019 along with a copy of the rental agreement (**Exhibit L # 1**) and a copy of the rental records (**Exhibit L # 2**). The landlord testified that rent was outstanding and the tenant made a payment of \$50.00 on 27 January 2020 (reflected in the outstanding balance). The landlord stated as of the hearing date 04 February 2020 rent remains outstanding.

Analysis

12. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
13. 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 rental agreement established when the tenancy began. Records are clear that rent is owing up to and including 31 January 2020 in the amount of **\$1206.70**. Rent for February 2020 can only be awarded up to and including the hearing date (04 February 2020) and on a daily rate of rent beyond the hearing date calculated as $(\$149.00 \times 12 \text{ months} = \$1788 \div 366 \text{ days} = \$4.89 \text{ per day} \times 4 \text{ days} = \$19.56)$. Rent for February 1 – 4, 2020 then is **\$19.56**.

Decision

14. The landlord's total claim for rent succeeds as follows:
- a) Rent owing up to 31 January 2020..... \$1206.70
 - b) Rent owing for February 1 – 4, 2020 19.56
 - c) Total Arrears \$1226.26

Issue 2: Vacant Possession of the Rented Premises

Landlord Position

15. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
16. The landlord testified that the tenant is in rental arrears and indicated that a notice to terminate was issued under Section 19 of *the Act* (**Exhibit L # 3**) to terminate the tenancy on 25 November 2019. The landlord testified that the notice to terminate was served by registered mail ([REDACTED]) which was never picked up by the respondent and subsequently returned to the sender. The landlord indicated that as of the hearing date (04 February 2020), the tenant remained in the unit. The landlord further testified that to the best of her knowledge, there is 1 adult living in the unit.

Analysis

17. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19 (4) and 34 as well as the service requirements identified in section 35.
18. The issue of non-payment of rent has been outlined and established by the testimony of the landlord along with documentary evidence presented by the landlord. I accept the evidence of the landlord and find that the tenant does owe rent as described in this decision above.
19. Section 19 (1)(b) requires that when a premises is rented for month to month and the tenant's rent is overdue for 5 days or more, the landlord may terminate the tenancy and the tenant is required to vacate the residential premises on a date not less than 10 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 as per Canada Post records, on 19 November 2019 with a termination date of 25 November 2019. As established above, the tenant owes rent which is in contravention of *The Act* and rental agreement between both parties. I further find that as the date of termination identified on the notice is not at least 10 clear days between the date the notice was served and the date the tenant is required to move out, the termination notice does not fully comply with the requirements of section 19 (1).

20. Sections 19 (4) 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.

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.*

21. As identified above, the landlord testified that the termination notice was served by registered mail which is a permitted method of service identified under section 35.
22. According to the reasons identified above, I find that the termination notice issued by the landlord not proper nor valid. Therefore, the landlord's request for an order for vacant possession of the property fails as the required 10 clear days was not provided to the tenant on the notice to vacate.

Decision

23. The landlord's claim for vacant possession fails.

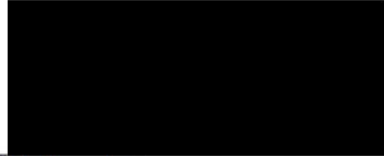
Summary of Decision

24. The landlord is entitled to the following:

- a) Rent Owing (up to and including 04 February 2020).....\$1226.26
- b) **Total owing to Landlord****\$1226.26**

10 February 2020

Date



Michael Greene
Residential Tenancies Tribunal