

Residential Tenancies Tribunal

Decision 19-0038-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:55 AM on 27 May 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord was represented by [REDACTED].
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 verbal monthly rental agreement with rent set at \$625.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$400.00 was collected on or about 01 April 2018 and the landlord issued a termination notice dated 29 March 2019 for the intended termination date of 04 April 2019 under Section 24 of the *Residential Tenancies Act, 2018*.
5. The tenant further issued a termination notice to the landlord dated 29 March 2019 for the intended termination date of 10 April 2019 under section 18 of the *Residential Tenancies Act, 2018*.
6. 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

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 landlord shows that the tenant was served with the notice of this hearing on the **06 May 2019** by serving the application for dispute resolution document to the tenant at the electronic address: [REDACTED] with verification that the documents were sent to this address that was provided by the tenant on his file. The tenant has had **20 days** to provide a response.

It should be noted that the tenant was served a notice of rescheduled hearing from Residential Tenancies which was signed for on 08 May 2019, was "REFUSED" by the addressee and was "RETURNED TO SENDER". The envelope and verification from Canada Post has been placed on file.

Contact with the tenant was made prior to the hearing. The tenant had indicated that he was at the Emergency Department and couldn't attend. There was no request on file and no indication that a request was phoned in.

The tenant had requested several subpoenas for the re-scheduled hearing and has failed to follow-up on the subpoenas.

Given the tenant's refusal of the Notice of Re-scheduled Hearing, the last minute request for postponement and the failure to follow up on the needed subpoenas, I find that this appears to be much like evading the hearing process. As such, as the tenant wished to postpone his claim, I will officially sever the two claims and proceed with the landlord's claim.

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 landlord's hearing in the tenant's absence and postponed the tenant's claim to a future date.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$600.00**
 - c) Payment of late fees **\$75.00**
 - d) 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, 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 - \$625.00

Relevant Submissions

Landlord Position

11. The landlord stated that she had entered into a verbal rental agreement with the tenant, commencing 01 April 2018. The agreed rent was set at \$625.00 per month and due on the 1st day of each month with a security deposit in the amount of \$400.00 collected on this tenancy. The landlord issued a termination notice (**Exhibit L # 3**) on 29 March 2019 for the intended date of 04 April 2019 (section 24). The landlord further stated that the tenant had also issued a termination notice (**Exhibit L # 4**) on 29 March 2019 for the intended termination date of 10 April 2019 (Section 18(8)(a&b)). The landlord stated that rent was not paid for the month of May 2019 in the amount of \$600.00 (**Exhibit L # 1**) for the period ending 31 May 2019 and stated as of the hearing date 27 May 2019 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 for May 2019 came due on 01 May 2019 and no payment was received. Rent can only be awarded up to and including the hearing date and is calculated as ($\$625.00 \times 12 \text{ months} = \$7500.00 \div 365 \text{ days} = \$20.55 \text{ per day} \times 27 \text{ days} = \554.85). Rent for May 1 – 27, 2019 then is **\$554.85**.
14. Respective of the rent for the remainder of the month of May 2019, the landlord is further awarded a daily rate of rent in the amount of \$20.55 commencing on 28 May 2019 and continuing until the day the landlord obtains vacant possession of the property.

Decision

15. The landlord's total claim for rent succeeds as follows:
- a) Rent owing for May 1 - 27, 2019 **\$554.85**
 - b) Total Arrears **\$554.85**
 - c) The landlord is awarded a daily rate of rent in the amount of \$20.55 beginning on 28 May 2019 and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

16. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
17. The landlord testified that the tenant has been in arrears since 01 May 2019. The landlord indicated that she is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

18. Established by undisputed fact in paragraph 13, the tenant was in arrears for the month of May 2019. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.

19. The calculated amount is as follows:

a. May 2, 2019 (1 st day Late @ \$5.00):	\$5.00
b. May 3 – 27, 2019 (25 days @ \$2.00):	<u>50.00</u>
c. Total Late Fees Owing	<u>\$55.00</u>

20. The issue of rental arrears has been determined in paragraph 15 above confirming that the tenant owes rent to the landlord.

Decision

21. The landlord's claim for late fees succeeds in the amount of \$55.00 as calculated up to and including the hearing date (27 May 2019).

Issue 3: Hearing Expenses

Landlord Position

22. 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 # 5**). The landlord is seeking this cost.

Analysis

23. 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 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

24. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Issue 4: Vacant Possession of the Rented Premises

Landlord Position

25. The landlord is seeking to recover possession of the rented premises located at [REDACTED].

26. The landlord testified that the tenant has interfered with the peaceful enjoyment of the landlord's reasonable safe use of the property. The landlord testified that it is apparent that the tenant is growing and producing marijuana in the property counter to the normal use of the property as a residential unit. Further, the landlord testified that upon inspection, it was noted that all the smoke detectors in the property were removed, that the tenant or someone permitted on the property by the tenant had tampered with the main electrical panel by removing all the fuse blocks and opening the ceiling hatch in the property thereby creating a break in the fire separation of the unit exposing the remaining units in the building to threat of fire in the event a fire started in the tenants unit. The landlord stated that this is not an unreasonable stretch given the tampering with the electrical panel and removal of the smoke detectors.
27. The landlord called as a witness, [REDACTED] (affirmed) who is responsible for maintenance on the building. [REDACTED] testified that he personally installed the new smoke detectors just 1 year previous and upon inspection they were all removed. He stated that the electrical panel was tampered with and all the fuse blocks were removed and lodged in front of the panel on the floor. He stated that there was an overpowering stench of marijuana and that there was an appearance of marijuana production ongoing. The witness indicated that property was heated by electricity.
28. The landlord testified that she is fearful of fire in the building as a result of the actions of the tenant and therefore issued a termination notice under section 24 of the *Residential Tenancies Act, 2018* (**Exhibit L # 3**) to terminate the tenancy on 04 April 2019. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 29 March 2019. The landlord indicated that as of the hearing date (27 May 2019), the tenant's belongings remained in the unit. The landlord further testified that to the best of her knowledge, there is 1 adult living in the unit.

Analysis

29. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 24(2) and 34 as well as the service requirements identified in section 35.
30. The issue of interference with peaceful enjoyment is a tricky section to substantiate and requires the landlord to show cause for the issuance of a short notice. In this case the landlord has concerns that the tenant has substantially degraded the fire safety and electrical systems of the unit thereby placing the remaining units in the building (5) and its occupants at serious risk in the event of a fire. Further, the removal of the fuse blocks from the main electrical panel not only constitutes a serious safety concern, but is also a violation of the *Electrical Regulations* under the *Public Safety Act* section 4(1)(a) which reads:

No person is permitted to perform in the Province of Newfoundland and Labrador unless they comply with the Public Safety Act and the Electrical Regulations which states.

Electrical work qualifications

4. (1) A person shall not do electrical work unless he or she

(a) is a registered contractor who holds an installation and repair permit;

31. With the concerns as noted above, the landlord issued a termination notice under section 24 of the *Residential Tenancies Act*. Section 24 requires that the landlord provide notice to the tenant that the rental agreement is terminated and the tenant is required to vacate the property on a specified date not less than 5 days after the notice has been served. I accept the evidence of the landlord and find that the tenant or someone permitted onto the property by the tenant, did tamper with the main electrical system and removed working smoke detectors from the unit which places the remaining tenants in the building at serious risk in the event of a fire.
32. On examination of the termination notice issued and submitted into evidence (Exhibit L # 3), I find the notice was served on 29 March 2019 with a termination date of 04 April 2019. As established in paragraph 31, the tenant has interfered with the peaceful enjoyment of landlord and the property 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 less than 5 days after the notice has been served and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 24

(1).Sections 24 (1) 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 24 (1)

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.*

33. As identified in paragraph 28, the landlord testified that she served the termination notice personally which is a permitted method of service identified under section 35.
34. 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 costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

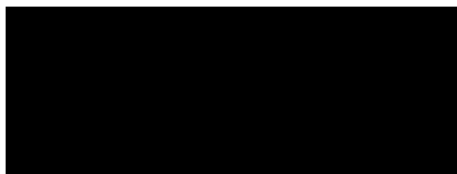
35. The landlord is entitled to the following:

- a) Rent Owing (up to and including 27 May 2019).....\$554.85
- b) Late Fees.....55.00
- c) Hearing Expenses \$20.00
- d) **Total owing to Landlord****\$629.85**

- e) Vacant Possession of the Rented Premises.
- f) A daily rate of rent in the amount of \$20.55 beginning 28 May 2019.
- g) 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.

30 May 2019

Date



Michael Greene
Residential Tenancies Tribunal