

Residential Tenancies Tribunal

Decision 19-0047-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 5 June 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 landlord1, participated in the hearing.
3. The applicant, [REDACTED], hereafter referred to as landlord2, did not participate in the hearing and was not represented.
4. The respondent, [REDACTED], hereafter referred to as tenant1 participated in the hearing.
5. The respondent, [REDACTED], hereafter referred to as tenant2 participated in the hearing.
6. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$500.00 per month (utilities included) and due on the 1st of each month. It was stated that there was no security deposit collected on the tenancy. The landlord issued a termination notice dated 15 May 2019 for the intended termination date of 26 May 2019 under Section 19 and 22 of the *Residential Tenancies Act, 2018*.
7. 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

8. The claim was amended with the consent of all parties to add [REDACTED] to the claim as a tenant in this matter.
9. The affidavit submitted by the landlords show that tenant1 was served with the notice of this hearing on the **17 May 2019** by serving the application for dispute resolution document to tenant1 personally at the rental unit address.
10. Landlord1 amended the claim at the hearing to:
 - a. Increase the amount of rent being claimed to \$1000.00 to reflect rent that has come due for June 2019.

Issues before the Tribunal

11. The landlords are seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$1000.00**
 - c) Payment of late fees **\$75.00**
 - d) Compensation for damages **\$3200.00**
 - e) Hearing expenses

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. 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 - \$1000.00

Relevant Submissions

Landlord Position

14. Landlord1 stated that they had entered into a verbal rental agreement with the tenants, commencing 30 September 2018. The agreed rent was set at \$500.00 per month and due on the 1st day of each month with no security deposit collected on this tenancy. The landlords issued a termination notice (**Exhibit L # 3**) on 15 May 2019 for the intended date of 26 May 2019 (section 19 & 22).

Landlord1 stated that rent was outstanding in the amount of \$1000.00 for the period ending 30 June 2019 and stated as of the hearing date 5 June 2019 rent remains outstanding.

Tenant Position

15. Tenant1 acknowledged and accepted that rent for the month of May and June 2019 have not been paid and is being withheld by the tenants. It is the position of tenant1 that he notified the landlords of an issue of a leak in the property when he first moved into the property and the landlords did nothing to repair it. Tenant1 indicated that he had permission from the landlord to find and fix a leak in the kitchen and he took on the project. He testified that the kitchen cabinets were removed, the kitchen flooring was removed, drywall was removed and the location of the leak was found. Tenant1 testified that he didn't mind at first as it was his intention to purchase the property. Tenant1 testified that there was no written notification provided to the landlords to complete repairs that the tenants felt was required and there was no application to Residential Tenancies to have an order issued to complete any repairs.

Analysis

16. I have reviewed the testimony and evidence of the landlord and tenants 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 landlords actually owed by the tenants.
17. With respect to the arrears being claimed, I agree with both the landlord and tenants 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 rental agreement established when the tenancy began. Rent cannot be withheld for repairs without the direction through an order of the Residential Tenancies Division. Rent for the period ending 31 May 2019 is outstanding in the amount of **\$500.00**. Rent for the month of June 2019 can only be awarded up to and including the hearing date (05 June 2019) and is calculated as $(\$500.00 \times 12 \text{ months} = \$6,000.00 \div 365 \text{ days} = \$16.44 \text{ per day} \times 5 \text{ days} = \$82.20)$. Rent for June 1 – 5, 2019 then is **\$82.20**.
18. The landlords are further awarded a daily rate of rent in the amount of **\$16.44** commencing on 6 June 2019 and continuing until the day the landlords obtain vacant possession of the property.

Decision

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

- a) Rent owing up to 31 May 2019..... \$500.00
- b) Rent owing for June 1 – 5, 2019 82.20
- c) Total arrears..... **\$582.20**

- d) The landlords are awarded a daily rate of rent in the amount of \$16.44 beginning on 6 June 2019 and continuing until the day the landlords obtain vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

- 20. The landlords are seeking payment of late fees as a result of the tenants' failure to pay rent on time.

- 21. Landlord1 testified that the tenants have been in arrears since 1 May 2019. Landlord1 indicated that they are seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

- 22. Established by undisputed fact above, the tenants were in arrears for the period ending 5 June 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.

- 23. Given that the tenants have been in arrears since 1 May 2019, the calculated amount of late fees is as follows:
 - a. May 2, 2019 (1st day late): \$5.00
 - b. May 3 – 31, 2019 (28 days @ \$2.00) 56.00
 - c. June 1 – 5, 2019 (5 days @ \$2.00) 10.00
 - d. **Total Late Fees** **\$71.00**

- 24. The issue of rental arrears has been determined in paragraph 17 above confirming that the tenants owe rent to the landlords.

Decision

- 25. The landlords' claim for late fees succeeds in the amount of \$71.00 as per the regulations established under the *Residential Tenancies Act, 2018*.

Issue 3: Compensation for Damages - \$3200.00

Relevant Submissions

Landlord Position

26. The landlords are claiming for several areas of damage as itemized in the claim breakdown (**Exhibit L #1**) as follows:
- a. Flooring removed by the tenant (**\$1000.00**)
 - b. Lower cabinets and countertop removed by tenant (**\$1000.00**)
 - c. Sink removed by tenant and not replaced (**\$200.00**)
 - d. Labor to repair above (local carpenter \$35.00/hr @ 28.57 hrs) (**\$1000.00**)
27. Landlord1 testified that in 2018, tenant1 worked for the landlord on his farm. Landlord1 indicated that the tenants were trying to purchase a house so he offered the subject property to the tenants to rent pending the conclusion of the landlords divorce settlement. In the fall, tenant1 advised that there was a leak and advised he would try to locate the problem. Landlord1 testified that the tenants removed the lower cabinets, countertop, sink and flooring from the property without permission, threw the items out and did not replace.
28. Landlord1 testified that the estimates (**Exhibit L # 1**) provided are estimates by landlord1 and are low compared to current market conditions. Landlord1 submitted before and after photos of the property (**Exhibit L # 2**) along with a series of text messages between the parties outlining the history of the tenancy and the repairs.

Tenant Position

29. Tenant1 testified that he noticed a leak in the kitchen area and advised the landlords that he would attempt to locate the leak. Tenant1 testified that the landlords were fully aware that the cabinets, countertop, floor and sink would be removed to complete the repairs.
30. Tenant1 indicated that it was his intention to purchase the property but could not obtain the necessary mortgage to do so. He further indicated that when the landlords failed to make the repairs, he would not pay rent for May and June 2019 and advised the landlords that they would not be staying in the unit.

Analysis

31. The relationship between the landlords and tenants was evident at the scheduled hearing. It is clear that the relationship started out as a cordial employer/employee and landlord/tenant relationship all wrapped into one. It appears to have gone off the rails when the employer/employee relationship began to break down and an arrangement for the purchase of the rented premises could not be reached. It is apparent from the series of text messages that the landlords were fully aware on or about December 5, 2018 that the flooring and cabinets had been removed at that point. From the tenants evidence it is abundantly clear that the tenants did locate the source of the leaking water (separated drain pipe) and made those repairs to the pipe. However, the complete restoration was not made, thereby leaving the property less than what it began to be (lower cabinets and flooring not replaced). The question is did the tenants have permission or perceived permission to complete the repairs and to what extent, if any. Based on the evidence and testimony presented I find that the tenants may very well have been led to believe that given that they were eventually going to purchase the property, that the repairs could be undertaken with the understanding that they would be completed over the winter. It is obvious that they were not completed and during this time the relationship deteriorated and fell apart resulting in the property being left in a condition less than when it was taken. Both parties are responsible for the agreements and obligations they enter into. The tenants began to make repairs to the property with the understanding that they would eventually own the property. It would be expected that the repairs would be completed. Now that the sale is not happening, the value of the property is no doubt substantially reduced. Similarly, the landlords did directly or indirectly give consent to correct the leak issues, but it can certainly be taken that the repairs would be completed once started. I find that the landlords are entitled to compensation for the unfinished repairs started by the tenants and not completed. This is not an easy value to determine and there are no exact costs for the materials nor do we know the age of the items in question, all which would be required to determine a depreciated value for the repairs. As such, I will make an arbitrary award based on the evidence and the contractual expectation of both parties. I find that \$1000.00 is a reasonable award in favor of the landlords and find the tenants responsible for this amount.

Decision

32. The landlords' claim for damages succeeds in the amount of \$1000.00.

Issue 3: Hearing Expenses

Landlord Position

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

Analysis

34. I have reviewed the testimony and evidence of the landlord 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

35. The tenants shall pay the reasonable expenses of the landlords in the amount of \$20.00.

Issue 4: Vacant Possession of the Rented Premises

Landlord Position

36. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
37. Landlord1 testified that the tenants have failed to pay rent as required by the rental agreement and has accumulated rental arrears. Landlord1 submitted a copy of the termination notice (**Exhibit L # 3**) issued to the tenants on 15 May 2019 for the intended termination date of 26 May 2019, thereby terminating the tenancy effective 26 May 2019.
38. The tenants have acknowledged that rent has not been paid for May and June 2019.
39. Landlord1 testified that the notice to terminate was served to the tenants on 15 May 2019 by personal service. The landlords indicated that as of the hearing date (05 June 2019), the tenants remained in the unit.

Analysis

40. 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.
41. The issue of rental arrears has been established above. There is no doubt that the tenants owe rent to the landlords and have failed to pay all the arrears by the ending date of the termination notice (26 May 2019).
42. The landlords issued a termination notice under section 19 of the *Residential Tenancies Act* by personal service. Section 19 requires that the landlords provide notice to the tenants that the rental agreement is terminated and the tenants are required to vacate the property on a specified date not less than 10 days after the notice has been served. I accept the evidence of the landlords and find that the tenants failed to make the required rent payments thereby accumulating rental arrears as calculated.
43. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 15 May 2019 with a termination date of 26 May 2019. As established above, the tenants have outstanding rent beyond the date of termination. I further find that as the date of termination identified on the notice is not less than 10 days after the notice has been served and the date the tenants are required to move out, the termination notice is in full compliance with the requirements of section 19(4). 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.*

44. Landlord1 testified that they served the termination notice by personal service which is a permitted method of service identified under section 35.
45. 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

46. 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.

Summary of Decision

47. The landlords are entitled to the following:
- | | | |
|----|---|------------------|
| a) | Rent Owning (up to and including 5 June 2019) | \$582.20 |
| b) | Late Fees | 71.00 |
| c) | Damages | 1000.00 |
| c) | Hearing Expenses | <u>\$20.00</u> |
| d) | Total owing to Landlords | \$1673.20 |
- e) Vacant Possession of the Rented Premises.
- f) A daily rate of rent in the amount of \$16.44 beginning 6 June 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.

14 June 2019

Date _____

Michael Greene
Residential Tenancies Tribunal