

Residential Tenancies Tribunal

Decision 19-0068-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:25 a.m. on April 9, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant did not attend the hearing.

Preliminary Matters

4. The landlord amended the claim for payment of rent from \$1200.00 to \$678.00. He discontinued the claim for late fees and the claim for damages.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the number on file, a female answered the phone. She said that [REDACTED] was not available. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
6. According to Rule 29.05(2)(a) a respondent to an application must be served with application for dispute resolution 10 clear days prior to the hearing date, 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.

7. The affidavit of service submitted by the landlord shows that the notice of this hearing was served electronically on March 20, 2019 and the tenant has had 18 days to provide a response. The landlord presented a copy of the e-mail he sent to the tenant on March 20, 2019 along with a copy of an e-mail from the tenant's case worker dated March 12, 2019 containing the tenant's e-mail address. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a. Vacant possession of the rental premises;
 - b. Payment of rent in the amount of \$678.00;

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 and 34 of the Act.

Issue 1: Payment of rent - \$678.00

11. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

12. The landlord stated that the tenant moved into the unit on October 26, 2015 on a month to month tenancy with rent set at \$1200.00 per month due on the 1st of each month. A security deposit in the amount of \$600.00 was paid on October 26, 2015.
13. The landlord testified that the tenant usually paid the rent by e-mail e-transfer and the rent was paid up to date in December 2018. He received the rent for January 2019 and February 2019 on February 4, 2019 from a third party. A portion of rent for March 2019 in the amount of \$939.00 was paid by a third party and the tenant paid the remainder in cash. The landlord further testified that he has received \$522.00 towards April's rent by a third party and \$678.00 remains unpaid. In support of the claim the landlord submitted the cheque stubs for the rent for the months of January – April 2019 (LL #3).

Analysis

14. I have reviewed the testimony and evidence of the landlord and I find the landlord did not receive January's rent until February 4, 2019. He has received the rent for the months of February and March and \$522.00 towards April's rent.
15. Rent for the month of April can only be awarded up and including the day of the hearing (April 9, 2019). As the landlord has received \$522.00 on April 1, 2019 there is an overpayment of rent for the period April 1 – 9, 2019 in the amount of \$166.95 ($\$522.00 - \355.05 for the period April 1 – 9, 2019 = \$166.95). Additionally, the tenant is responsible for rent on a daily basis in the amount of \$39.45 ($\$1200.00 \times 12 \text{ months} = \$14,400.00 \div 365 \text{ days} = \39.45 per day) beginning April 10, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

16. The tenant shall pay a daily rate of rent in the amount of \$39.45 beginning April 10, 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.
17. The landlord shall retain the overpayment of rent only in the amount equal to the per diem beginning April 10, 2019 and continuing to the date the landlord obtains possession of the rental premises.

Issue 2: Vacant Possession of the Rental Premises

18. An application for vacant possession is determined by the validity of the termination notice issued by the landlord. In this case, the termination notice was issued under Section 19 of the Act where the tenant contravenes the Act by not paying rent.

Landlord Position

19. The landlord testified a termination notice (LL #2) under Section 19 of the *Residential Tenancies Act, 2018*, was served on the tenant on January 23, 2019 to vacate on February 3, 2019 because the rent had not been paid for the month of January 2019. The rent for January 2019 was not paid until February 4, 2019. To the date of the hearing the tenants still reside in the unit.

20. The landlord further testified that he had served two termination notices in 2018 for non-payment of rent. The first notice was served on August 20, 2018 and the other notice was served on November 17, 2018. The landlord submitted copies of both of the termination notices (LL #5).

Analysis

21. Section 19.(1)(b) requires that rent be overdue 5 days or more before a landlord can give a termination notice to vacate the unit not less than 10 days after the notice is served on the tenant. As determined in paragraph 14 above, the rent for January 2019 was in arrears when the termination was served but the rent was not paid in full until February 4, 2019. One day after the effective day of the notice. I find the notice allowed the required amount of time and contains all of the necessary information to serve on the tenant as per sections 19.(4) and (34) of the Act.


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22. 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 should the landlord require the Sheriff to enforce the Order of Possession.

Summary of Decision

23. The landlord is entitled to the following:
- a) Vacant Possession of the rented premises
 - b) A daily rate of rent in the amount of \$39.45 beginning April 10, 2019 and continuing until the day the landlord obtains possession of the rental unit.
 - c) Any cost incurred should the landlord be required to have the Sheriff enforce the attached Order of Possession.
 - d) The landlord shall retain the **\$166.95** overpayment of rent only in the amount equal to the per diem beginning April 10, 2019 and continuing to the date the landlord obtains possession of the rental premises.

April 15, 2019
Date


Residential Tenancies Section