

## Residential Tenancies Tribunal

Decision 19-072-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:20 am on 04 March 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not participate

### Issues before the Tribunal

3. The landlord is seeking the following:
  - a. A determination of the validity of a termination notice issued to her on 19 January 2019
  - b. An order for a payment of rent in the amount of \$1398.00;
  - c. An order for a payment of late fees in the amount of \$72.00;
  - d. An order for a payment of utilities in the amount of \$97.78; and
  - e. Authorization to retain the security deposit.

### Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is sections 15 and 18 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

## **Preliminary Matters**

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted an affidavit with her application showing that the tenants were served with notice of the hearing, by e-mail, on 01 February 2019 and they have had 30 days to provide a response. She also submitted a copy of a termination notice she had received from the tenants in which they had corresponded with the landlord using that same e-mail address. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

## **Issue 1: Validity of Termination Notice**

### **Relevant Submissions**

7. The landlord stated that she had entered into a monthly rental agreement with the tenants, commencing 01 November 2018, and a copy of the executed agreement was submitted at the hearing (JK #1). The agreed rent was set at \$1300.00 per month and was due on the 1<sup>st</sup> day of each month. It is also acknowledged in the rental agreement that the tenants had paid a security deposit of \$650.00.
8. The landlord stated that she had a conversation with the tenants on 16 January 2019 and they informed her on that date that they were vacating at the end of February 2019. A few days later, on 19 January 2019, they sent an e-mail to the landlord (JK #2) informing her that they would vacate on 16 February 2019. They moved on that date.
9. The landlord is seeking a determination of the validity of the e-mail notification she had received from the tenants on 19 January 2019.

### **Analysis**

10. Section 18 of the *Residential Tenancies Act, 2018* outlines the notice requirements tenants must abide by when terminating their rental agreement and the relevant subsections state:

### **Notice of termination of rental agreement**

**18.** (1) *A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises*

...

*(b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and*

...

*(9) In addition to the requirements under section 34, a notice under this section shall*

*(a) be signed by the person providing the notice;*

*(b) be given not later than the first day of a rental period;*

*(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*

*(d) be served in accordance with section 35.*

11. Section 34 of this Act states:

#### **Requirements for notices**

**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.*

12. As can be seen from these 2 sections of the *Residential Tenancies Act, 2018*, the notice issued to the landlord on 19 January 2019 is defective.

13. Firstly, according to ss. 18(9)(c), any termination notice issued to the landlord must specify a termination date which falls on the last day of the rental period. On 19 January 2019, the earliest termination date the tenants could have specified would have been 28 February 2019. As they had indicated that their agreement was ending on 16 February 2019, the notice is invalid.
14. Furthermore, the notice contains numerous technical defects—it is not in the form prescribed by the minister, it does not identify the rental unit, it does not specify the landlord's residential address and it does not state the section of the *Act* under which the notice is given. These defects also render the notice invalid.

## **Decision**

15. The termination notice issued to the landlord on 19 January 2019 is invalid and of no effect.

**Issue 2: Rent - \$1398.00**

**Issue 3: Late Fees - \$72.00**

## **Relevant Submissions**

16. The landlord submitted rent records at the hearing showing the payments she had received from the tenants during the course of this tenancy (JK #3). These records show that the tenants paid their rent in 2 or 3 installments each month and that no payments were made at all for February 2019.
17. These records also show that the landlord had been assessing late fees during the course of this tenancy. The records show that the landlord assessed a late fee of \$31.00 on 15 November 2018, \$7.00 on 03 December 2018 and further \$65.00 on 01 February 2019. In addition to these fees found on the landlord's rent records, according to her application she is seeking a further \$72.00.
18. The landlord calculates that the tenants owe her a total of \$1470.00 in rent and late fees.

## **Analysis**

19. According to her records, the tenants paid a total of \$3833.00 to the landlord between 05 November 2018 and 16 January 2019. The total rent that was charged to the tenants for the period from 01 November 2018 to 28 February 2019 was \$5200.00 (4 months x \$1300.00 per month). This leaves a balance owing of \$1367.00 (\$5200.00 - \$3833.00).
20. Regarding the late fees, section 15.(1) of the *Residential Tenancies Act, 2018* states:

### ***Fee for failure to pay rent***

**15.** (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

21. The minister has set the following fees:

*Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:*

*(a) \$5.00 for the first day the rent is in arrears, and*

*(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

22. The landlord had been assessing late fees since 02 November 2018. On that date she charged the tenants the permitted \$5.00 fee and these fees accrued by \$2.00 each day thereafter. Accordingly, I agree with her that the tenants owed \$31.00 in late fees on 15 November 2018. On 03 December 2018, as the tenants had remained in arrears, the total amount of late fees had crept up to \$67.00. However, as the rent and late fees were never fully paid off during the course of this tenancy and as the tenants never had a zero-balance, the maximum late fees the landlord was entitled to charge the tenants was \$75.00 which was reached on 07 December 2018. After 07 December 2018, no further late fees could be assessed.

### **Decision**

23. The landlord's claim for a payment of rent succeeds in the amount of \$1367.00.
24. The landlord's claim for a payment of late fees succeeds in the amount of \$75.00.

### **Issue 4: Utilities - \$97.78**

#### **Relevant Submissions**

25. According to the submitted rental agreement, the tenants were responsible for paying their own utilities and the landlord testified that the tenants were required to have the electricity account placed in their name at the beginning of their tenancy—01 November 2018. However, the landlord stated that the tenants did not have the account switched over until 15 November 2018 and she was charged for the electricity consumed by the tenants for the first half of November 2018.

26. At the hearing, the landlord submitted a bill from Newfoundland Power (JK #4) showing that she was charged \$179.23 for the period from 20 October 2018 to 15 November 2018 and she calculated that the tenants owe her \$97.78 of that amount.

### **Analysis**

27. The evidence submitted by the landlord establishes that the tenants were required to pay for their own utilities and that the landlord was charged for their electricity usage between 01 November and 15 November 2018. Accordingly, I agree with her that the tenants are responsible for compensating her for the amount she was billed during that period.
28. I calculate that the tenants owe \$103.35 ( $\$179.23 \div 26 \text{ days} = \$6.89 \text{ per day} \times 15 \text{ days} = \$103.35$ ).

### **Decision**

29. The landlord's claim for a payment of utilities succeeds in the amount of \$103.35.

### **Issue 5: Hearing Expenses**

30. The landlord submitted receipts at the hearing showing that she had a paid \$20.00 to file this application and \$27.83 to develop photographs. As the landlords' claim has been successful, the tenants shall pay these hearing expenses.
31. The landlord's claim for hearing expenses succeeds in the amount of \$47.83.

### **Issue 6: Security Deposit**

32. According to her rent records, the tenants paid a security deposit of \$650.00, in 2 installments, on 09 October and 19 October 2018. Receipt of that deposit is also acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

**Summary of Decision**

33. The landlord is entitled to the following:

- a) Rent Owing .....\$1367.00
- b) Late Fees .....\$75.00
- c) Utilities .....\$103.35
- d) Hearing Expenses.....\$47.83
  
- e) LESS: Security Deposit..... (\$650.00)
  
- f) Total Owing to Landlord .....\$943.18

02 April 2019

\_\_\_\_\_  
Date



\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal