

Residential Tenancies Tribunal

Decision 19-0083-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:45 am on 13 November 2019 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 25 July 2019 for the intended termination date of 31 October 2019 under Section 18 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 **28 October 2019** by serving the documents to the tenant at the electronic address: [REDACTED]. The landlord supplied service verification in the form of the email sent and a document where the tenant supplied the email address for use. The tenant has had **15 days** to provide a response.

There was no contact information on file to contact the tenant in advance of the hearing.

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 reduce the amount being claimed to \$473.50 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 **\$473.50**
 - 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 18, 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 - \$473.50

Relevant Submissions

Landlord Position

11. The landlord stated that the parties entered into a written rental agreement with the tenant, commencing 24 July 1996. The agreed rent is 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 31 October 2019. The landlord stated as of the hearing date 13 November 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 is owing up to and including 31 October 2019 in the amount of **\$473.50**. Rent for November 2019 can only be awarded up to and including the hearing date (13 November 2019) and on a daily rate of rent beyond the hearing date calculated as $(\$149.00 \times 12 \text{ months} = \$1788.00 \div 365 \text{ days} = \$4.90 \text{ per day} \times 13 \text{ days} = \$63.70)$. Rent for November 1 – 13, 2019 then is **\$63.70**.
14. Respective of the rent for the remainder of the month of November 2019, the landlord is further awarded a daily rate of rent in the amount of \$4.90 commencing on November 14, 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 up to 31 October 2019..... \$473.50
- b) Rent owing for November 1 - 13, 2019 63.70
- c) Total Arrears **\$537.20**

d) **LESS: Payments made by AES (01 Nov 19).....(\$149.00)**

e) Total Owing by tenant **\$388.20**

f) The landlord is awarded a daily rate of rent in the amount of \$4.90 beginning on 14 November 2019 and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Vacant Possession of the Rented Premises

Landlord Position

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

17. The landlord testified that a notice to terminate was issued under Section 18 of *the Act* (**Exhibit L # 3**) to terminate the tenancy on 31 October 2019. The landlord testified that the notice to terminate was served by the landlord to the tenant on 25 July 2019 by posting a copy of the notice to the front door of the rented property. The landlord indicated that as of the hearing date (13 November 2019), 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

18. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 18 (9) and 34 as well as the service requirements identified in section 35.

19. Section 18 (2)(b) requires that when a premises is rented for month to month, the landlord may terminate the tenancy and the tenant is required to vacate the residential premises on a date not less than 3 months before the end of the rental period. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 25 July 2019 with a termination date of 31 October 2019. I find that as the date of termination identified on the notice is not less than 3 months before the end of the rental period, the termination notice is in full compliance with the requirements of section 18 (2)(b).

20. Sections 18 (9) 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 18 (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 the rental period;*
- (c) state the date, which shall be the last day of the rental period, on which the rental agreement terminates and the tenant intends or the date by which the tenant is required to vacate the residential premises; and*
- (d) 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 placing a copy of the notice upon the door of the rented premises 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 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

23. 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.

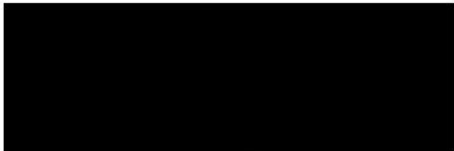
Summary of Decision

24. The landlord is entitled to the following:

- a) Rent Owing (up to and including 13 November 2019)\$388.20
- b) **Total owing to Landlord\$388.20**
- c) **Vacant Possession of the Rented Premises**
- d) **A daily rate of rent in the amount of \$4.90 beginning 14 November 2019.**
- e) **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.**

19 November 2019

Date



**Michael Greene
Residential Tenancies Tribunal**