

Residential Tenancies Tribunal

Decision 19-0094-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 28 February 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via teleconference to the Residential Tenancies Office in Mt Pearl.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as tenant1, did not participate in the hearing.
4. The respondent, [REDACTED], hereafter referred to as tenant2, did not participate in the hearing.
5. In a proceeding under the *Residential Tenancies Act*, 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 application was AMENDED to reduce the amount of rent being claimed by \$150.00 as a result of a tenant payment made on February 15, 2019. The new rent balance is \$756.00.
7. The tenants, [REDACTED] were 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, [REDACTED], was served with the notice of this hearing on the **08 February 2019** by serving the Application for Dispute Resolution to the tenant personally at rental premises located at [REDACTED]. The tenant has had **13 days** to provide a response.

The affidavit submitted by the landlord shows that the tenant, [REDACTED], was served with the notice of this hearing on the **08 February 2019** by serving the Application for Dispute Resolution to the tenant via email: [REDACTED] and providing verification (copy of sent email) that the Application for Dispute Resolution was sent to this address. The tenant has had **13 days** to provide a response. The landlord has indicated that the tenants are common law partners and are over the age of 16 years as required for service. Further, the landlord indicated that the email address was an address used between both parties for communication (tenant replied to the rental ad and used to communicate) and rent payments through e-transfers.

A phone call was placed to the tenants at the number on file [REDACTED] which was not in service. An additional phone call was made to another number provided by the landlord [REDACTED] without success. The landlord indicated that the numbers above were provided to her by the tenants as their numbers changed. Verification of the most recent number was substantiated through a text message from the tenant to the landlord (Exhibit L # 4).

As the tenants were 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 tenants' absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$756.00**;
 - b) Payment of late fees **\$75.00**
 - c) Vacant possession of the rented premises;

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, 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 - \$756.00

Relevant Submissions

Landlord Position

11. The landlord stated that she had entered into a written month to month rental agreement with the tenants, commencing June 1, 2018 with rent due on the 1st day of each month as per the rental agreement (Exhibit L #2). The agreed rent was set at \$845.00 per month and due on the 1st day of each month with a security deposit in the amount of \$600.00 collected on this tenancy. The landlord stated that rent for February 2019 was outstanding and that a payment in the amount of \$150.00 was received from the tenants on February 15, 2019 leaving a balance outstanding in the amount of \$756.00. The landlord testified that rent was normally paid via e-transfer and presented the records to that effect (Exhibit L # 1). The landlord stated as of the hearing date 28 February 2019 the tenants remained in the unit and rent is outstanding in the amount of \$756.00.

Analysis

12. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenants.
13. Table # 1: Rent Records as extracted from records supplied by the landlord

Date	Comment	Due	Payment	Balance
	Bal. from Dec 31, 2018	\$ -	\$ -	\$0.00
1-Jan-19	Rent Due	\$ 845.00		(\$845.00)
8-Jan-19	Rent Payment		\$ 450.00	(\$395.00)
16-Jan-19	Rent Payment		\$ 100.00	(\$295.00)
18-Jan-19	Rent Payment		\$ 234.00	(\$61.00)
1-Feb-19	Rent Due	\$ 845.00		(\$906.00)
15-Feb-19	Rent Payment		\$ 150.00	(\$756.00)

14. With respect to the arrears being claimed, I agree with the landlord that rent is owed by the tenants. Rent is required to be paid by the tenants for use and occupation of the rented premises as set out in the written monthly rental agreement established when the tenancy began. Rent for February 2019 came due on February 1, 2019 and a payment was received on February 15, 2019 leaving a balance outstanding of \$756.00 for the period ending February 28,

2019. Additionally, the tenants are responsible for rent on a daily basis in the amount of **\$27.78** beginning on 01 March 2019 and continuing until the day the landlord obtains vacant possession of the rented premises, calculated as (\$845.00 X 12 months = \$10,140.00 ÷ 365 days = \$27.78 per day).

Decision

15. The landlord's total claim for rent succeeds as follows:

- a) Rent owing for February 2019..... \$756.00
- b) A daily rate beginning March 1, 2019..... **\$27.78**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

- 16. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
- 17. The landlord testified that the tenants have been in arrears since January 1, 2019. The landlord indicated that the amount being claim was calculated at \$75.00 as the tenants have been in arrears for 59 days as of the hearing date.

Analysis

- 18. Established by undisputed fact in paragraph 13, the tenants were in arrears since January 1, 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. The calculated amount of late fees in this claim will exceed the maximum allowable under regulations which is set at \$75.00.
- 19. The issue of rental arrears has been determined in paragraph 14 above confirming that the tenants owe rent to the landlord.

Decision

20. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

21. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
22. The landlord testified that when the tenants fell in arrears, she issued a termination notice under Section 19 of *the Act* (Exhibit L # 3) to terminate the tenancy on February 16, 2019. She testified that the notice was served personally and as of the hearing date (February 28, 2019), the tenants remained in the unit. The landlord testified that there is two adults and 1 child aged 4 years living in the unit.

Analysis

23. Established by undisputed statement of fact in paragraph 11, the rental agreement is a written monthly tenancy commencing on June 1, 2018 and rent due on the 1st day of each month. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 19. (1)(b), (4) and 34 as well as the service requirements identified in Section 35.
24. The issue of rental arrears has been determined in paragraph 14 above confirming that the tenants owe rent to the landlord.
25. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenants a termination notice to vacate the property not less than 10 days after the notice is served on the tenants. On examination of the termination notice issued and submitted into evidence (Exhibit L # 3), I find the notice was served on February 5, 2019 with a termination date of February 16, 2019. As established in paragraph 14 and undisputed by the tenants, rent had been in arrears since January 1, 2019. As rent had been in arrears for 36 days, I find this is beyond the 5 day requirement set out in *the Act*. I further find that as the date of termination identified on the notice is 10 clear days between the date the notice was issued and the date the tenants is required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).
26. 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.*

27. As identified in paragraph 22 and undisputed by the tenants, the landlord testified that she served the termination notice personally which is a permitted method of service identified under Section 35.
28. 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 cost associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

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

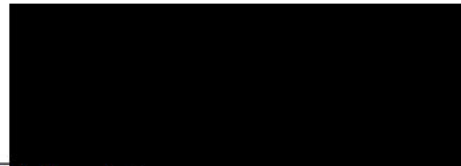
Summary of Decision

30. The landlord is entitled to the following:

- a) Rent Owing\$756.00
- b) Late Fees.....75.00
- c) Total Owing to the Landlord\$831.00**
- d) Vacant Possession of the Rented Premises
- e) A daily rate of rent set at **\$27.78** beginning March 1, 2019 and continuing until the day the landlord obtains vacant possession of the Rented Premises.
- f) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

March 8, 2019

Date



Michael Greene
Residential Tenancies Tribunal