

Residential Tenancies Tribunal

Decision 19-0101-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:40 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 and to the tenant's home.
2. The applicant, [REDACTED], hereafter referred to as landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as tenant, did not participate in the hearing.
4. 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

5. The application was AMENDED to remove the request to dispose of the security deposit as the tenancy remains ongoing.
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 **14 February 2019** by serving the Application for Dispute Resolution to the tenant to the phone number used for communications between the parties via text [REDACTED] used for communications between the parties and providing verification (images of the text messages sent to the tenant's number) that the documents were sent to this address. The tenant has had **14 days** to provide a response.

The landlord provided text communication with the Affidavit of Service where the tenant advised her on January 25, 19 that he had changed his number from the one indicated on the initial rental agreement and that the number provided above is the good number. Further, the landlord attached text communication with the Affidavit of the Service where the tenant replies to the landlord indicating "I was trying to call you..."

A phone call was placed to the tenant at the number on file [REDACTED] without success.

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.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Payment of rent owing **\$1275.00**;
 - b) Payment of late fees
 - c) Vacant possession of the rented premises;
 - d) Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. 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 - \$1275.00

Relevant Submissions

Landlord Position

10. The landlord stated that he had entered into a written month to month rental agreement with the tenant, commencing January 8, 2019 and with rent due on the last day of each month as per the rental agreement (Exhibit L #1). The agreed rent was set at \$1275.00 per month and due on the last day of each month with a security deposit in the amount of \$225.00 collected on this tenancy. The landlord stated that no rent was received from the tenant for February 2019. The landlord testified that the first month's rent was paid upon entry with nothing else paid. The landlord stated as of the hearing date 28 February 2019 the tenant remained in the unit and rent is outstanding in the amount of \$1275.00.

Analysis

11. 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 tenant.
12. With respect to the arrears being claimed, I agree with the landlord that rent is owed by the tenant. Rent is required to be paid by the tenant 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 8, 2019 however for the purpose of this decision can only be calculated up to and including the day of the hearing (28 February 2019). That calculation is ($\$1275.00 \times 12 \text{ months} = \$15,300.00 \div 365 \text{ days} = \$41.92 \text{ per day} \times 20 \text{ days} = \838.40). Rent owing for February 8 – 28, 2019 then is **\$838.40**. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$41.92** beginning on 01 March 2019 and continuing until the day the landlord obtain vacant possession of the rented premises.

Decision

13. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing for February 8 – 28, 2019..... \$838.40
 - b) A daily rate beginning March 1, 2019..... **\$41.92**

Issue 2: Payment of Late Fees - \$59.00

Landlord Position

14. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
15. The landlord testified that the tenant has been in arrears since February 9, 2019. The landlord indicated that the amount being claim was calculated at \$59.00 as the tenant has been in arrears for 19 days as of the hearing date.

Analysis

16. Established by undisputed fact in paragraph 12, the tenant was in arrears since February 9, 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 is:

i. February 9, 2019 (First Day Late @ \$5.00)	\$5.00
ii. Feb 10 – 28, 2019 (19 Days Late @ \$2.00)	<u>38.00</u>
iii. Total Late Fees	\$43.00

17. The issue of rental arrears has been determined in paragraph 13 above confirming that the tenant owes rent to the landlord.

Decision

18. The landlord's claim for late fees succeeds in the amount of \$43.00.

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

19. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
20. The landlord testified that when the tenant fell in arrears, she issued a termination notice under Section 19 of the Act (Exhibit L # 3) to terminate the tenancy on February 18, 2019. She testified that the notice was served personally and as of the hearing date (February 28, 2019), the tenant remained in the unit. The landlord testified that there is one adult living in the unit.

Analysis

21. Established by undisputed statement of fact in paragraph 9, the rental agreement is a written monthly tenancy commencing on January 8, 2019 and rent due on the last 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.
22. The issue of rental arrears has been determined in paragraph 13 above confirming that the tenant owes rent to the landlord.
23. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenant a termination notice to vacate the property not less than 10 days after the notice is served on the tenant. On examination of the termination notice issued and submitted into evidence (Exhibit L # 3), I find the notice was served on February 7, 2019 with a termination date of February 18, 2019. As established in paragraph 10 and undisputed by the tenant, rent had been in arrears since January 31, 2019. As rent had been in arrears for 6 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 tenant is required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).
24. 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.*

25. As identified in paragraph 20 and undisputed by the tenant, the landlord testified that she served the termination notice personally which is a permitted method of service identified under Section 35.
26. 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

27. 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.

Issue 3: Hearing Expenses

Landlord Position

28. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (Exhibit L # 4), a receipt from Costco for Copies in the amount of \$9.38 (Exhibit L # 5) and a receipt from Staples in the amount of \$1.17 (Exhibit L # 6). The landlord is seeking these costs.

Analysis

29. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord 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

30. The tenant shall pay the reasonable expenses of the landlord in the amount of \$30.55

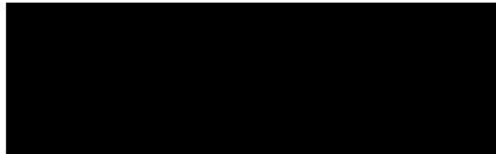
Summary of Decision

31. The landlord is entitled to the following:

- a) Rent Owing\$838.40
- b) Late Fees 43.00
- b) Hearing Expenses \$30.55
- c) Total Owing to the Landlord\$911.95**
- d) Vacant Possession of the Rented Premises
- e) A daily rate of rent set at **\$41.92** 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 7, 2019

Date



Michael Greene

Residential Tenancies Tribunal