

Residential Tenancies Tribunal

Application 2019 No. 102C

Decision 19-0102-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:50 pm on 20 January 2020 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], Regional Manager.
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 \$755.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$490.00 was collected on this tenancy on or about 15 May 2013. The landlord issued a termination notice dated 02 December 2019 for the intended termination date of 14 December 2019 under Section 19 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 landlord amended the application at the onset of the hearing to include rent that has come due since the application was filed for December 2019 and January 2020 thereby the new rental amount owing is \$130.00 up to and including 31 January 2020.
7. 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 **11 Dec 2019** by serving the application for dispute resolution document to the tenant personally at the rental unit address. The tenant has had **39 days** to provide a response.

There was no contact information on file for the tenant and therefore no contact was attempted.

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.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$130.00**
 - c) Payment of late fees **\$75.00**
 - d) 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 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 - \$130.00

Relevant Submissions

Landlord Position

11. The landlord stated that he had entered into a written rental agreement with the tenant, commencing 13 May 2013. The agreed rent is set at \$755.00 per month and due on the 1st day of each month with a security deposit in the amount of \$490.00 collected on this tenancy. The landlord issued a termination notice (**Exhibit L # 2**) on 02 December 2019 for the intended date of 14 December 2019 (Section 19). The landlord stated that rent was outstanding in the amount of \$130.00 (**Exhibit L # 2**) for the period ending 31 January 2020 and stated as of the hearing date 20 January 2020 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 for the month of January 2020. 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 for the period ending 31 December 2019 was overpaid in the amount of **\$565.00**.
14. Rent for the Month of January can only be awarded up to and including the hearing date (20 January 2020) and is calculated as ($\$755.00 \times 12 \text{ months} = \$9060.00.00 \div 366 \text{ days} = \$24.75 \text{ per day} \times 20 \text{ days} = \495.00). The calculated rent due for January 1 – 20, 2020 then is **\$495.00**.
15. Additionally, records show that a cash payment of \$60.00 was made by the tenant on 02 January 2020 there by leaving a total overpayment of **\$130.00**
16. The landlord is further awarded a daily rate of rent in the amount of **\$24.95** commencing on 21 January 2020 and continuing until the day the landlord obtains vacant possession of the property.

Decision

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

a) Rent overpayment up to 31 December 2019.....(\$565.00)

b) LESS: Rent owing for January 1 – 20, 2020 495.00

c) PLUS: Tenant Payment 02 January 2020 (60.00)

d) Sub-total (overpayment).....(\$130.00)

e) Total Tenant overpayment as of 20 January 2020(\$130.00)

f) The landlord is awarded a daily rate of rent in the amount of \$24.95 beginning on 21 January 2020 and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

18. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.

19. The landlord testified that the tenant has been in arrears from September 2019 until 30 December 2019. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

20. Established by undisputed fact above, the tenant was in arrears for the period ending 30 December 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.

21. Given the tenant has been in arrears for the period of September 2019 to 30 December 2019 and any calculated amount of late fees will far exceed the maximum allowable per late period of \$75.00.

22. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

23. The landlord's claim for late fees succeeds in the amount of \$75.00 as per the regulations established under the *Residential Tenancies Act, 2018*.

Issue 3: Hearing Expenses

Landlord Position

24. 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 # 3**). The landlord is seeking this cost.

Analysis

25. 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

26. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Issue 4: Vacant Possession of the Rented Premises

Landlord Position

27. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
28. The landlord testified that the tenant has failed to pay rent as required by the rental agreement and has accumulated excessive rental arrears. The landlord submitted a copy of the termination notice (**Exhibit L # 2**) issued to the tenant on 02 December 2019 for the intended termination date of 14 December 2019 thereby terminating the tenancy effective 14 December 2019. On the termination date the tenant was in arrears.
29. The landlord testified that the notice to terminate was served to the tenant on 02 December 2019 by personal service. The landlord indicated that as of the hearing date (20 January 2020), the tenant remained in the unit.

Analysis

30. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19(4) and 34 as well as the service requirements identified in section 35.

31. The issue of rental arrears has been established above. There is no doubt that the tenant owes rent to the landlord and has failed to pay all the arrears by the ending date of the termination notice (14 December 2019).
32. The landlord issued a termination notice under section 19 of the *Residential Tenancies Act* by personal service. Section 19 requires that the landlord provide notice to the tenant that the rental agreement is terminated and the tenant is required to vacate the property on a specified date not less than 10 days after the notice has been served. I accept the evidence of the landlord and find that the tenant failed to make the required rent payments thereby accumulating rental arrears as calculated above.
33. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 02 December 2019 with a termination date of 14 December 2019. As established above, the tenant has outstanding rent beyond the date of termination. I further find that as the date of termination identified on the notice is not less than 10 days after the notice has been served and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 19(4). 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.*

34. As identified above, the landlord testified that he served the termination notice by personal service which is a permitted method of service identified under section 35.
35. 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

36. 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

37. The landlord is entitled to the following:

- a) Rent overpayment (up to and including 20 January 2020)..... (\$130.00)
- b) Late Fees.....75.00
- c) Hearing Expenses \$20.00
- d) **Total credit to Tenant** **(\$35.00)**
- e) Vacant Possession of the Rented Premises.
- f) A daily rate of rent in the amount of \$24.95 beginning 21 January 2020.
- g) 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.

6 February 2020

Date



Michael Greene
Residential Tenancies Tribunal