

Residential Tenancies Tribunal

Decision 19-121-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 13 March 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1800.00;
 - b. An order for a payment of late fees in the amount of \$75.00;and
 - c. An order for vacant possession of the rented premises.

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 are Sections 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord submitted an affidavit stating that the tenant was served with notice of the hearing, by e-mail, on 28 February 2019 and she has had 12 days to provide a response. The landlord also submitted a rental application and copy of an e-mail exchange she had with the tenant to confirm that she had sent the claim to an e-mail address used by the tenant. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended her application at the hearing and stated that she was seeking an additional \$900.00 in rent for a total claim of \$2700.00.

Issue 1: Rent Owning - \$2700.00

Relevant Submissions

The Landlords' Position

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant, commencing 01 November 2018, and a copy of that executed lease was submitted with her application (NP #2). The agreed rent was set at \$900.00 per month and it is acknowledged in the agreement that the tenant paid a security deposit of \$450.00.
9. The landlord submitted a copy of her rent records at the hearing (NP #1) showing the payments she had received from the tenant and she pointed out that the tenant had not paid any rent for January, February or March 2019.
10. The landlord is seeking an order for a payment \$2700.00 for those 3 months.

Analysis

11. The testimony and evidence submitted at the hearing establishes that the tenant has not paid rent as required. As the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
12. I calculate the rent owing to the date of the hearing to be \$2184.67 (\$1800.00 for the period ending 28 February 2019 and \$384.67 for March 2019 (\$900.00 per month x 12 months = \$10800.00 per year ÷ 365 days = \$29.59 per day x 13 days = \$384.67)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$2184.67.
14. The tenant shall pay a daily rate of rent in the amount of \$29.59, beginning 14 March 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

15. The landlord has assessed late fees in the amount of \$75.00.

Analysis

16. 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.*

17. 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.

Decision

18. As the tenant has been in arrears since 02 January 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

19. With his application, the landlord submitted a copy of a termination notice (NP #3) which she stated had been posted to the tenant's door on 29 January 2019.
20. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 10 February 2019.
21. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

22. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

23. According to the testimony and evidence submitted at the hearing, on 29 January 2019 the tenant was in arrears in the amount of \$900.00 and had been in since the beginning of that month. The tenant has made no payments to the landlord since the notice was issued and in the meantime rent for February and March 2019 has also come due.
24. As the notice meets the timeframe requirements set out in section 19 of the *Act* it is a valid notice.

Decision

25. The landlord's claim for an order for vacant possession of the rented premises succeeds.
26. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issues 4: Hearing Expenses

27. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expenses.

Issue 5: Security Deposit

28. The landlord testified that the tenant paid a security deposit of \$450.00 on 10 October 2018 and receipt of that deposit is 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

29. The landlord is entitled to the following:
 - A payment of \$1829.67, determined as follows
 - a) Rent Owing\$2184.67
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) **LESS: Security Deposit..... (\$450.00)**
 - e) Total Owing to Landlord.....\$1829.67
 - A payment of a daily rate of rent in the amount of \$29.59, beginning 14 March 2019 and continuing to the date the landlord obtains possession of the rental unit,
 - An order for vacant possession of the rented premises,

- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

14 March 2019

Date



John R. Cook

Residential Tenancies Tribunal