

Residential Tenancies Tribunal

Decision 19-0155-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 10:30 am on 28 March 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 landlord, participated in the hearing and was represented by [REDACTED] - Affirmed.
3. The respondent, [REDACTED], hereafter referred to as tenant, participated 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 at the onset of the hearing to increase the rent being claimed from \$890.00 to \$1780.00 resulting from rent that has come due since the filing of the application.
6. The tenant was served with the notice of this hearing on the **05 March 2019** by serving the Application for Dispute Resolution to the tenant personally at the rental property address [REDACTED].

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Payment of rent owing **\$1780.00**;
 - 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 - \$1780.00

Relevant Submissions

Landlord Position

10. The landlord stated that they had entered into a written fixed term rental agreement with the tenant, commencing September 1, 2018 and set to expire on August 31, 2019 with rent due on the first day of each month (Exhibit L #1). The agreed rent was set at \$865.00 per month and a security deposit in the amount of \$432.50 collected on this tenancy.
11. The landlord stated that rent for the month of January 2019 was charged to the tenant (pre-authorized payment from chequing account) and was returned as Non-Sufficient Funds (NSF) and thereby incurred a \$25.00 NSF fee. The landlord stated that the same thing happened for March 2019 rent. The landlord submitted a rental ledger (Exhibit L # 1) as evidence to support the claim.
12. The landlord went on to advise that rent for the month of February 2019 was received from the tenant as required.

Tenant Position

13. The tenant stated that she was aware that the landlord was looking for rent owed, but it was her contention that she thought rent was being paid. She stated she was having some trouble financially and found rent to be really expensive.

Analysis

14. I have reviewed the testimony and evidence of the landlord and tenant 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.
15. With respect to the arrears being claimed, there is no doubt that the tenant owes rent for the month of January 2019 in the amount of \$865.00. For this month as well it is clear to see that a fee for a NSF Charge was applied to the tenants account as a result of the missed January 2019 payment. Rent for February was paid and a similar event to what occurred in January happened again in March 2019. Rent for March 2019 came due on March 1, 2019, however, for the purpose of this decision can only be calculated up to and including the day of the hearing (28 March 2019). That calculation is ($\$865.00 \times 12 \text{ months} = \$10,380.00 \div 365 \text{ days} = \$28.44 \text{ per day} \times 28 \text{ days} = \796.32). Rent owing for March 1 – 28, 2019 then is **\$796.32**. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$28.44** beginning on 29 March 2019 and continuing until the day the landlord obtains vacant possession of the rented premises.
16. The tenant failed to ensure that there was adequate funds available in her account for the automatic rent payments. The result was two (2) NSF fees incurred of \$25.00 each which the landlord has included as part of the rent charged on the ledger. These fees are also the responsibility of the tenant as the tenant is responsible to ensure that adequate funds are available for any agreed upon automatic payments. The landlord is awarded the NSF Fees of **\$50.00**.

Decision

17. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing for January 2019 \$865.00
 - b) NSF Fee for January 2019 25.00
 - c) Rent Owing for March 1 – 28, 2019 796.32
 - d) NSF Fee for March 2019..... 25.00
 - e) **Total Owing to Landlord** **\$1711.32**
 - f) **A daily rate beginning March 29, 2019** **\$28.44**

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 without a zero balance since December 31, 2018. The landlord indicated that the amount being claimed as the maximum allowable under the regulations in the amount of \$75.00 as any calculated amount would exceed the maximum permitted to be charged.

Tenant Position

20. The tenant indicated she understood what the landlord was claiming in this portion of the claim.

Analysis

21. Established by undisputed fact in paragraph 11, the tenant was in arrears since December 31, 2018. 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 in this case would far exceed the maximum allowable of \$75.00.
22. The issue of rental arrears has been determined in paragraph 17 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.

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

24. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
25. The landlord testified that when the tenant fell in arrears and as such issued a termination notice under Section 19 of the Act (Exhibit L # 3) to terminate the tenancy on February 15, 2019. She testified that the notice was served personally and as of the hearing date (March 28, 2019), the tenant remained in the unit. The landlord testified that there is one adult living in the unit.

Analysis

26. Established by undisputed statement of fact in paragraph 10, the rental agreement is a written fixed term tenancy commencing on September 1, 2018 and expiring on August 31, 2019 with 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.
27. The issue of rental arrears has been determined in paragraph 17 above confirming that the tenant owes rent to the landlord.
28. 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 1, 2019 with a termination date of February 15, 2019. As established in paragraph 15 and undisputed by the tenant, rent had been in arrears since December 31, 2018. As rent had been in arrears for 87 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).
29. 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.

30.

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.*

31. As identified in paragraph 25 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.
32. 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

33. 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

34. 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), The landlord is seeking this cost.

Analysis

35. 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

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

Summary of Decision

37. The landlord is entitled to the following:

- a) Rent Owing (inclusive of NSF Fees).....\$1711.32
- b) Late Fees.....75.00
- b) Hearing Expenses \$20.00
- c) Total Owing to the Landlord\$1806.32**
- d) Vacant Possession of the Rented Premises
- e) A daily rate of rent set at **\$28.44** beginning March 29, 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

April 3, 2019

Date



Michael Greene
Residential Tenancies Tribunal