

Residential Tenancies Tribunal

Application 2024-1076-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 5 December 2024 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED] [REDACTED] and [REDACTED], hereinafter referred to as "the landlords", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing. The contact telephone number for the respondent was no longer in service. 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 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 he has been properly served. The landlords submitted an affidavit with their application stating that an employee of the landlord had personally served the tenant with the notice of hearing on 20 November 2024 at approximately 1:30 PM (L#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.
5. There is a written month to month rental agreement (L#2) which commenced on 27 September 2019. Rent is currently \$ 1135.00 per month, due on the 1st of each month. A security deposit of \$397.50 was collected on the tenancy prior to occupancy, which remains in the possession of the landlords.

6. The landlord amended the application and are requested hearing expenses.
7. 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 must establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

8. The landlord is seeking the following:
 - An Order of Vacant Possession of the rental property
 - Rent paid in the amount \$665.50
 - The Security Deposit to be used against monies owed
 - Hearing Expenses in the amount of \$20.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018 (the Act)*.
10. Also relevant and referred to in this decision are Sections 19, 34 and 35 of the *Act*.

Issue 1: Vacant Possession of the Rental Premises

11. The landlord testified the tenant took occupancy of the rental premises on 27 September 2019, and rent for the tenant is subsidized by the Government of Newfoundland and Labrador and the NL Housing Corporation. Along with the application, the landlords supplied a rental ledger (L#3). The landlords testified the tenant was issued a termination notice under Section 19 of the *Residential Tenancies Act, 2018*, via personal service, on 17 October 2024 with a request for the tenant to vacate by 29 October 2024 (L#4) as the tenant was in rental arrears at that time. On the date of the hearing (5 December 2024), the tenant remains in the rental premises.

Analysis

12. Section 19, Notice where failure to pay Rent, of the *Residential Tenancies Act, 2018* states:

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.*

....

(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.

13. Rent is required to be paid by a tenant for the use or occupancy of a residential premises. The tenant had been in rental arrears in excess of 5 days when the notice was serviced on 17 October 2024 to be out of the rental premises by 29 October 2024. On the date of termination, 29 October 2024, the tenant was still in arrears. In accordance with Section 19 of the *Residential Tenancies Act*, 2018 as stated above, the termination notice meets the requirements of the Act and is a valid notice.

14. The tenant should have vacated the property by 29 October 2024.

Decision

15. The landlord's claim for vacant possession succeeds.

Issue 2: Rent Paid \$665.50

16. The landlords testified that rent is outstanding in the amount of \$665.50. Along with the application, the landlord provided a rental ledger (L#3) which is partially reproduced in the analysis below. In addition to the rental ledger provided, the landlords testified on the date of the hearing (5 December 2024), the rental arrears of \$665.50 remained.

Analysis

17. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid by a tenant(s) during the use or occupancy of a residential premises.
18. The rental ledger supplied indicates that as of the date of termination, 29 October 2024, the tenant was in rental arrears of \$410.50. The landlords testified the tenant on the date of the hearing (5 December 2024) has rental arrears of \$665.50. The rental ledger is amended to show a daily rate for December as this tribunal does not consider future rent (see below).

Date	Transaction	Amount Due	Payment	Balance
31 July 24				-495.50
1 Aug 24	Rent due	\$880.00		\$384.50
1 Aug 24	Payment		\$229.00	\$155.50
30 Aug 24	Payment		\$880.00	-\$724.50
1 Sept 24	Rent due	\$880.00	\$0.00	\$155.50
27 Sept 24	Payment		\$651.00	-\$495.50
1 Oct 24	Rent due	\$1135.00	\$229.00	\$410.50
31 Oct 24	Payment		\$651.00	-\$240.50
1 Nov 24	Rent due	\$1135.00	\$229.00	\$665.50
20 Nov 24	Payment		\$242.00	\$423.50
29 Nov 24	Payment		\$651.00	-\$227.50
29 Nov 24	Payment		\$242.00	-\$469.50
1-5 Dec 24	Rent due	\$186.05		-\$283.45

Daily rate: \$1135.00 x 12 months = \$13,620.00

\$13,620 / 366 days = \$37.21 per day

Decision

19. The tenant shall pay a daily rate of \$37.21 until such time as the landlord regains possession of the property.

Issue 3: Security Deposit

20. As the landlords are owed moneys, they are entitled to apply the security deposit against the sum owed. The security deposit in this case is \$397.50. Section 14(7) of the Act states that the landlords shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. Prior to 2024, the interest rate prescribed by the regulations was 0% for the relevant years. In 2024, the rate was set to 1% cumulative simple annual interest. That results in total interest at the time of the hearing being \$3.70 for a total of **\$401.20**.

Issue 4: Hearing Expenses

21. The landlords offered evidence of the application fee of \$20.00 (L#4) and is seeking compensation. As the application succeeds, in accordance with Residential Tenancies Program Policy 12-001, the landlord claim for hearing expenses succeeds.

Decision

22. The landlord's claim for hearing expenses succeeds in the amount of **\$20.00**.

Summary of Decision

23. The tenant shall pay to the landlord \$0.00 as follows:

Hearing Expense	\$20.00
Less: partial security deposit	\$20.00
Total	<u>\$ 0.00</u>

- The tenant shall pay a daily rate of rent beginning 6 December 2024 of \$37.21, until such time as the landlord regains possession of the property.
- The tenant shall vacate the property immediately.
- The landlord will be awarded an Order of Possession of the rented premises.
- The tenant shall also pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the Order of Possession.

18 December 2024
Date

Michael J. Reddy
Residential Tenancies Office