

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-353-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 12 June 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". The respondent, [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 \$4397.25;
 - b. An order for vacant possession of the rented premises; and
 - c. An order for a payment of hearing expenses in the amount of \$20.00.

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 is section 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 with her application stating that she had sent the notice of hearing to the tenant by registered letter on 14 May 2019. She also submitted a copy of the tracking history associated with that letter which shows that 2 notice cards were left for the tenant but the letter was unclaimed by her.

7. Section 42 of the *Residential Tenancies Act, 2018* outlines the ways in which an applicant may serve an application on a respondent and subsection 6 states:

Application to director

42. (6) For the purpose of this section, where a copy of the application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the copy of the application was prepaid and properly addressed and sent.

Although the tenant had not collected the notice of hearing from the Post Office, as it was sent by registered mail on 14 May 2019, it is considered to have been served on her on 19 May 2019. 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.

8. The landlord amended her claim at the hearing and stated that she was now seeking \$4290.70 in rent. She also stated that she was no longer seeking an order for possession of the premises as she regained possession on 24 May 2019.

Issue 1: Rent - \$4290.70

Relevant Submissions

The Landlord's Position

9. The landlord stated that she had entered into a monthly rental agreement with the tenant on 04 May 2017 and a copy of that executed agreement was submitted with her application (■ #1). In 2019, the rent was set at \$463.00
10. On 03 May 2019 the landlord sent the tenant a termination notice, by registered letter, and a copy of that notice was submitted with her application (■ #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 27 May 2019. The tenant returned the keys to the landlord on 24 May 2019.

11. The landlord submitted rent records at the hearing (■ #3) showing the payments she had received from the tenant since June 2018, the last time she had a zero-balance. These records show that the tenant had made only 1 rent payment between June 2018 and May 2019—\$550.00 on 01 November 2018.
12. The landlord's records show that the tenant owes \$4290.70 for the period ending 24 May 2019.

Analysis and Decision

13. I accept the testimony and evidence of the landlord in this matter and I find that the tenant had not paid rent as required. Based on the landlord's submitted rent records, I find that the tenant owes the landlord \$4290.70.

Issue 2: Hearing Expenses

14. The landlord submitted a receipt showing that she had paid \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

15. The landlord is entitled a payment of \$4310.70, determined as follows:

- a) Rent Owing\$4290.70
- b) Hearing Expenses\$20.00
- c) Total Owing to Landlord\$4310.70

08 October 2019

Date

Jo _____
Residential Tenancies Tribunal _____