

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-359-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:15 am on 13 June 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED] were represented at the hearing by [REDACTED] hereinafter referred to as "the landlord". The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "the tenants", 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 \$1350.00,
  - b. Authorization to retain the security deposit of \$1012.50, 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 is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

### Preliminary Matters

6. The tenants were not present or represented at the hearing. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted an affidavit at the hearing stating that the tenants were served by Xpresspost and the tracking history shows that they had signed for the notice on 28 May 2019. They have had 15 days to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

7. The landlord amended her application at the hearing and stated that she was also seeking \$1350.00 for rent for June 2019.

### **Issue 1: Rent - \$2700.00**

8. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenants approximately 3 years ago. The current rent is set at \$1350.00 per month and the landlord stated that the tenants had paid a security deposit of \$1012.50.
9. The landlord submitted rent records at the hearing (█████#1) showing the rent payments the tenants had made since July 2017. According to these records, the tenants' rent was paid and up-to-date for the period ending 30 April 2019 but she pointed out that the tenants have paid no rent for May or June 2019.
10. The landlord is seeking an order for a payment of \$2700.00 for those 2 months.

### **Analysis**

11. I accept the landlord's claim that the tenants had not paid rent as required for May and June 2019. As the landlord is also seeking an order for vacant possession of the rented premises, 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 amount owing to be \$1926.94 (\$1350.00 for the period ending 31 May 2019 and \$576.94 for June 2019 (\$1350.00 per month x 12 months = \$16,200.00 per year ÷ 365 days = \$44.38 per day x 13 days = \$576.94)).

### **Decision**

13. The landlord's claim for a payment of rent succeeds in the amount of \$1926.94.
14. The tenants shall pay a daily rate of rent in the amount of \$44.38, beginning 14 June 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

## Issue 2: Vacant Possession of the Rented Premises

### Relevant Submissions

15. With her application, the landlord had submitted a copy of a termination notice [REDACTED] #2) which she stated she had placed in the tenants' mailbox and had posted to the door to the rental unit on 09 May 2019.
16. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 20 May 2019.
17. The landlord is seeking an order for vacant possession of the rented premises.

### Analysis

18. 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.*

19. According to the landlord's rent records, on 09 May 2019 the tenants were in arrears in the amount of \$1350.00 and had been in arrears since the beginning that month. The tenants have made no payments since that notice was issued and since then rent for June 2019 has also come due.
20. As notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

### Decision

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.

22. The tenants 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.

### **Issue 3: Security Deposit**

23. The landlord stated that the tenants had paid a security deposit of \$1012.50 approximately 3 years ago. As the landlord's claim has been successful, she shall retain that security deposit as outlined in this decision and order.

### **Summary of Decision**

24. The landlord is entitled to the following:

- A payment of \$914.44, determined as follows:
  - a) Rent Owing .....\$1926.94
  - b) LESS: Security Deposit..... (\$1012.50)
  - c) Total.....\$914.44
- A payment of a daily rate of rent in the amount of \$44.38, beginning 14 June 2019 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenants 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 attached Order of Possession.

14 June 2019

Date

  
John R. Cook

Residential Tenancies Tribunal