

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0407-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 13 June 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via tele-conference to Mt. Pearl Residential Tenancies Office, 149 Smallwood Drive, Mt. Pearl, NL.
2. The applicant, [REDACTED] hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED] hereafter referred to as the tenant participated in the hearing.
4. The details of the claim were presented as a written fixed term rental agreement with rent set at \$1000.00 per month and due on the 1st of each month with the rental agreement set to expire on 31 October 2019. It was stated that there was no security deposit collected on the tenancy. The landlord issued a termination notice dated 16 May 2019 for the intended termination date of 28 May 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
5. 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 has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The affidavit submitted by the landlord show that the tenant was served with the notice of this hearing on the **28 May 2019** by serving the application for dispute resolution document to the tenant personally at the rental unit address.
7. The landlord amended the claim at the hearing to:
 - a. Increase the amount of rent being claimed from \$2100.00 to \$3100.00 to reflect rent that has come due for June 2019.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$3100.00**
 - c) Hearing expenses

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. 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 - \$3100.00

Relevant Submissions

Landlord Position

11. The landlord stated that both parties had entered into a fixed term written rental agreement, commencing 01 November 2018. The agreed rent was set at \$1000.00 per month and due on the 1st day of each month with no security deposit collected on this tenancy. The landlord issued a termination notice (**Exhibit L # 3**) on 16 May 2019 for the intended date of 28 May 2019 (section 19). The landlord stated that rent was outstanding in the amount of \$3100.00 for the period ending 30 June 2019 and stated as of the hearing date 13 June 2019 rent remains outstanding.

Tenant Position

12. The tenant acknowledged that rent in the amount of \$2100.00 is outstanding. The tenant quickly became agitated and unruly in the hearing room. The tenant indicated that the landlord committed a breach of the privacy act by releasing the tenant name and address. At this point, the tenant was advised that this venue was not the correct venue for a claim on a breach of privacy. It was suggested that he would have to contact the Privacy Commissioner of Canada's Office. The tenant suggested he would file a claim in Supreme Court. The tenant continued to be unruly and was asked to settle down or the hearing would be concluded and an award to the applicant would be made. The tenant continued with the disruptive behavior. It was indicated that if he wished to proceed, then he would have to respect the protocol and rules of the hearing room.
13. The tenant indicated he had nothing to add after the landlord presented his evidence. He asked who the supervisor for Residential Tenancies was and he was provided with the name of the Director. He asked if the hearing was recorded, and it was indicated that all hearings are recorded. The tenant was asked for which months he indicated he owed rent to which he responded "*that's on him man*". The tenant became agitated again with the outburst "*The man was taking fucking pictures through my window.....*". From here the tenant was asked to leave the room on three occasions. He was advised that the Royal Newfoundland Constabulary (RNC) would be contacted to remove him from the building. He responded by stating, "*It's going up from here bud*". The tenant was told to remove himself from the room. His response was "*Can you come remove me from the room please*". In an effort to secure the safety of the Residential Tenancies employee and Applicant, both were instructed to leave the hearing room and to contact the RNC to remove the tenant. The tenant then left the room, briefly spoke with the Director and left the building. The hearing for the day was over and concluded on paper.
14. The tenant did not submit any evidence in defense of his claims. He disputed the landlord's claim that \$3100.00 was owed in rent. He stated that only \$2100.00 was owed.

Analysis

15. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
16. With respect to the arrears being claimed, I agree with both the landlord and tenant that rent is owed. The determination of the amount of rent owed can only rest with the records submitted from both parties. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Rent cannot be withheld

without the direction through an order of the Residential Tenancies Division. Based on the evidence provided I find that rent for the period ending 31 May 2019 is outstanding in the amount of **\$2100.00**. Rent for the month of June 2019 can only be awarded up to and including the hearing date (13 June 2019) and is calculated as $(\$1000.00 \times 12 \text{ months} = \$12,000.00 \div 365 \text{ days} = \$32.88 \text{ per day} \times 13 \text{ days} = \$427.44)$. Rent for June 1 – 13, 2019 then is **\$427.44**.

17. The landlord is further awarded a daily rate of rent in the amount of \$32.88 commencing on 14 June 2019 and continuing until the day the landlord obtains vacant possession of the property.

Decision

18. The landlord's total claim for rent succeeds as follows:

- a) Rent owing up to 31 May 2019..... \$2100.00
 - b) Rent owing for June 1 – 13, 2019 427.44
 - c) Total arrears..... **\$2527.44**
- d) The landlord is awarded a daily rate of rent in the amount of \$32.88 beginning on 14 June 2019 and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Hearing Expenses

Landlord Position

19. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 4**). The landlord did not have an opportunity to indicate if this expense was being sought. As the expense was incurred to file the claim, it is prudent that the landlord be given an opportunity to seek this cost.

Analysis

20. I have reviewed the evidence of the landlord and tenant in this matter. The expenses incurred by the landlord is 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

21. The tenant shall pay the reasonable expenses of the landlord in the amount of

\$20.00.

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

22. The landlord is seeking to recover possession of the rented premises located at
[REDACTED]
23. The landlord testified that the tenant has failed to pay rent as required by the rental agreement and has accumulated rental arrears. The landlord submitted a copy of the termination notice (**Exhibit L # 3**) issued to the tenant on 16 May 2019 for the intended termination date of 28 May 2019, thereby terminating the tenancy effective 28 May 2019.
24. The tenant has acknowledged that rent has not been paid in his calculation in the amount of \$2100.00.
25. The landlord testified that the notice to terminate was served to the tenant on 16 May 2019 by personal service. The landlord indicated that as of the hearing date (13 June 2019), the tenant remained in the unit.

Analysis

26. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19(4) and 34 as well as the service requirements identified in section 35.
27. The issue of rental arrears has been established above. There is no doubt that the tenant owes rent to the landlord and has failed to pay all the arrears by the ending date of the termination notice (28 May 2019).
28. The landlord issued a termination notice under section 19 of the *Residential Tenancies Act* by personal service. Section 19 requires that the landlord provide notice to the tenant that the rental agreement is terminated and the tenant is required to vacate the property on a specified date not less than 10 days after the notice has been served. I accept the evidence of the landlord and find that the tenant failed to make the required rent payments thereby accumulating rental arrears as calculated above.
29. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 16 May 2019 with a termination date of 28 May 2019. As established above, the tenant has outstanding rent beyond the date of termination. I further find that as the date of termination identified on the notice is not less than 10 days after the notice has been served

and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 19(4). 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.

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.*

30. The landlord testified that he served the termination notice by personal service which is a permitted method of service identified under section 35.
31. 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 costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

32. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

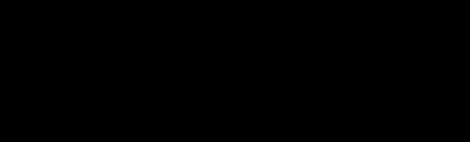
33. The landlord is entitled to the following:

a)	Rent Owing (up to and including 13 June 2019)	\$2527.44
b)	Hearing Expenses	<u>\$20.00</u>
c)	Total owing to Landlord	\$2547.44

- d) **Vacant Possession of the Rented Premises.**
e) A daily rate of rent in the amount of **\$32.88** beginning **14 June 2019**.
f) An order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

17 June 2019

Date


Michael Greene
Residential Tenancies Tribunal