

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0585-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **2:15 pm on 19 January 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as landlord1, did not participate in the hearing and was represented by [REDACTED] (*Affirmed*).
3. The applicant, [REDACTED], hereafter referred to as landlord2, did not participate in the hearing and was represented by [REDACTED] (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as tenant1, did not participate in the hearing. (*Absent and Not Represented*)
5. The details of the claim were a written term tenancy which commenced on or about 01 November 2019. The agreement switched to a monthly agreement governed by the same agreement after the first year. Rent was set at \$800.00 and due on the first of each month. A security deposit in the amount of \$600.00 was paid on or about 1 November 2019 and remains with the landlord.
6. 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

7. The application was AMENDED at the hearing to:
 - a. Amend the file to add rent that has come due for January 2021 and to reflect payments made by the tenant as follows:
 - i. 29 December 2020: \$200.00
 - ii. 31 December 2020: \$400.00
 - iii. 04 January 2021: \$200.00
8. The tenant, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, 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/she has been properly served*.

The affidavit submitted by the landlords show that the tenant was served with the notice of this hearing on the **08 January 2021** by serving the documents to the tenant via email: [REDACTED]. The tenant has had **10 days** to provide a response.

Contact was attempted to the tenant via the phone number on file:

[REDACTED]: No answer, Message left

9. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.

Issues before the Tribunal

10. The landlords are seeking the following:
 - a. Vacant Possession
 - b. Payment of rent owing **\$800.00**;
 - c. Hearing expenses.

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.

12. 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 - \$800.00

Relevant Submissions

Landlord Position

13. The landlords testified that the tenant failed to make regular rental payments and accrued arrears.
14. The landlords stated that they had entered into a written fixed term agreement which converted to a monthly agreement after the first year. Rent was set at \$800.00 per month and due on the 1st day of each month with a security deposit in the amount of \$600.00 collected on this tenancy on or about 01 November 2019. The landlords stated that as of the hearing date rent remained in arrears in the amount of \$800.00 up to and including 31 January 2021. The landlords demonstrated the arrears with rental records (**Exhibit L # 1**).

Analysis

15. I have reviewed the testimony and evidence of the landlords 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 landlords actually owed by the tenant.
16. With respect to the arrears being claimed, I agree with the landlords that rent is owed by the respondent in this matter. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the written rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 December 2020 is outstanding with a balance of **\$200.00**. Further, rent for January 1 – 19, 2021 is calculated up to and including the hearing date (19 January 2021) calculated as $(\$800.00 \times 12 \text{ months} = \$9,600.00 \div 365 \text{ days} = \$26.30 \text{ per day} \times 19 \text{ days} = \$499.70)$. Rent for January 1 – 19, 2021 then is **\$499.70**.
17. The landlords are entitled to a daily rate of rent of **\$26.30** per day commencing **20 January 2021** until the day the landlords obtain vacant possession.

Decision

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

- a) Rent owing up to 31 December 2020 \$200.00
- b) Rent owing for January 1 – 19, 2021 499.70
- c) **Subtotal**..... **\$699.70**
- d) **LESS: Tenant Payment 04 Jan 2021** **(\$200.00)**
- e) **Total Owing to landlords** **\$499.70**
- f) A daily rate of rent commencing 20 Jan 2021 \$26.30

Issue 2: Vacant Possession of the Rented Premises

Landlord Position

19. The landlords are seeking to recover possession of the rented premises located

[REDACTED]

20. The landlords testified that when the tenant fell in arrears, they issued a termination notice under Section 19 of the Act (**Exhibit L # 2**) to terminate the tenancy on 28 December 2020. They testified that the tenant was in arrears on the termination date and remained in arrears as of the hearing date (19 January 2021), and remained in the unit. The landlord testified that there is 1 adult and 1 child under 7 years of age (approximately) living in the unit.

Analysis

- 21. Established by undisputed statement of fact above, the rental agreement is a written monthly tenancy. 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.
- 22. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlords.
- 23. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlords may give the tenants a termination notice to vacate the property not less than 10 days after the notice is served on the tenants. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 17 December 2020 with a termination date of 28 December

2020. As established above and undisputed by the tenant, rent had been in arrears since September 2020 on an ongoing basis. As rent had been in arrears for 30 plus days, I find this is well 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).

24. Sections 19. (4) and 34 below identify the technical requirements of the termination notice. 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.*

25. As identified above, the landlords testified that the termination notice was served personally which is a permitted method of service identified under Section 35.

26. According to the reasons identified above, I find that the termination notice issued by the landlords to be proper and valid. Therefore, the landlords are entitled to:

- a. An order for vacant possession of the property;
- b. An order for any and all costs associated with the certification of these orders for filing with the Sheriff/court for enforcement;

- c. 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

- 27. The landlords' claim for vacant possession succeeds. The landlords are further awarded costs associated with the certification of these order and enforcement of the Possession Order by the High Sheriff of NL.

Issue 3: Hearing Expenses

Landlord Position

- 28. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 3**). The landlords are seeking this cost.

Analysis

- 29. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlords 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

- 30. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

Summary of Decision

31. The landlords are entitled to the following:

a)	Rent Owing	\$499.70
b)	Hearing Expenses	<u>\$20.00</u>
c)	Total owing to the landlords	<u>\$519.70</u>
d)	Vacant Possession of the Property	
e)	A daily rate of rent set at \$26.30 beginning 20 January 2021 and continuing until the day the landlords obtain vacant possession of the Rented Premises.	
f)	Any incurred costs associated with the certification of these orders for filing and enforcement with the Sheriff/Courts.	
g)	Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order	

20 January 2021

Date

Michael Greene
Residential Tenancies Tribunal