

Residential Tenancies Tribunal

Application █

Decision 21-0124-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:45 am** on **04 May 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, █ hereafter referred to as the landlord, participated in the hearing and was represented by █ (*Affirmed*).
3. The respondent, █ hereafter referred to as the tenant, participated in the hearing. (*Affirmed*).
4. The details of the claim were presented as a written fixed term agreement with rent set at \$700.00 per month POU and due on the 1st of each month and a security deposit in the amount of \$350.00 was collected on or about 28 November 2020.
5. 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

6. The application was AMENDED at the hearing to add rent that has come due since the filing of the application for April and May 2021 and tenant payments on or about 31 March 2021 in the amount of \$760.00 and 01 April 2021 in the amount of \$700.00. The new amount outstanding is \$1289.00 up to and including 31 May 2021.

7. The landlord further amended the claim to remove the request for the NSF fees charged as he has no receipts to document any charges.
8. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **10 April 2021** by serving the original documents to the tenant personally at the rented premises.

A phone call was placed to the landlord to the numbers on file:

[REDACTED] There was no answer, Message left
[REDACTED] The landlord applicant answered the phone and agreed to join the hearing

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Payment of rent owing **\$1289.00**;
 - b) Payment of late fees
 - c) Vacant possession of the rented premises;
 - d) Hearing expenses.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are:
 - a. Sections 19, 34 and 35 of *the Act*, and;
 - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owing - \$1289.00

Relevant Submissions

Landlord Position

12. The landlord stated that they had entered into a written fixed term rental agreement with the tenant. The agreed rent is set at \$700.00 per month and due on the 1st day of each month (POU) with a security deposit in the amount of \$350.00 collected on this tenancy on or about 28 November 2020.

13. The landlord demonstrated the arrears with rental records (**Exhibit L # 2**) as total rent outstanding is \$1289.00 up to and including 31 May 2021. The landlord stated as of the hearing date 04 May 2021 the tenant remained in the unit and rent is outstanding.

Tenant Position

14. The tenant disputed the claim of the landlord stating that she only owes \$620.00. The tenant claimed to have receipts of payments but has not submitted any documents to be considered.

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 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.

16. It is apparent in their respective testimony that the landlord and tenant agree on the payments made by the tenant. The following is a tribunal summary of the rental records and the testified payments:

Table # 1: Extraction from Rental Records and Testimony

Date	Comment	Due	Payment	Balance
	Bal. Forward	\$ -	\$ -	\$0.00
1-Dec-20	Rent Due (NSF)	\$ 700.00		(\$700.00)
16-Dec-20	Rent Payment		\$ 700.00	\$0.00
1-Jan-21	Rent Due (NSF)	\$ 700.00		(\$700.00)
6-Jan-21	Late Fees	\$ 43.00		(\$743.00)
20-Jan-21	Rent Payment		\$ 850.00	\$107.00
1-Feb-21	Rent Due (NSF)	\$ 700.00		(\$593.00)
25-Feb-21	Late Fees	\$ 29.00		(\$622.00)
1-Mar-21	Rent Due	\$ 700.00		(\$1,322.00)
16-Mar-21	Late Fees	\$ 27.00		(\$1,349.00)
31-Mar-21	Rent Payment		\$ 760.00	(\$589.00)
1-Apr-21	Rent Due	\$ 700.00		(\$1,289.00)
1-Apr-21	Rent Payment		\$ 700.00	(\$589.00)
1-May-21	Rent Due	\$ 700.00		(\$1,289.00)

17. With respect to the arrears being claimed, I agree with the landlord that rent is owed. 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 30 April 2021 has not been paid leaving a balance of **\$589.00**. Further, rent for May 2021 can only be calculated up to and including the day of the hearing (04 May 2021). That calculation is $(\$700.00 \times 12 \text{ months} = \$8,400.00 \div 365 \text{ days} = \$23.01 \text{ per day} \times 4 \text{ days} = \$92.04)$. Rent for May 1 – 4, 2021 is **\$92.04**.

18. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$23.01** beginning on **05 May 2021** and continuing until the day the landlord obtain vacant possession of the rented premises.

Decision

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

- a) Rent owing up to 30 April 2021 \$589.00
- b) Rent owing for May 1 – 4, 2021 92.04
- c) Total Arrears **\$681.04**
- d) Total due to Landlord..... \$681.04**
- e) A daily rate beginning 05 May 2021 **\$23.01**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

20. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.

21. The landlord testified that the tenant has been in arrears on an ongoing basis since 01 February 2021. The landlord indicated that he was claiming the late fees allowable under the *Residential Tenancies Regulations, 2018*.

Tenant Position

22. The tenant had nothing to say on the late fees except to indicate that she understood the claim.

Analysis

23. Established by undisputed fact above, the tenant was in arrears since 01 February 2021 as seen in Table # 1 above. There is a late fee charged prior to this date but that would be considered in a different late period.

24. For this period the landlord has charged two late fees as follows:

- a. 25 Feb 2021 @ \$29.00
- b. 16 March 2021 @ \$27.00
- c. Total of \$56.00**

These amounts have been reflected in the rental arrears above and cannot be awarded again as late fees.

25. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
26. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord. Any calculated amount of late fee will exceed the maximum allowable by regulation per late period. The landlord has been awarded \$56.00 as rental arrears above which is part of the total allowable. As such, the landlord is awarded late fees in the amount of **\$19.00** (\$75.00 - \$56.00).

Decision

27. The landlord's claim for late fees succeeds in the amount of \$19.00.

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

28. The landlord is seeking to recover possession of the rented premises located at
[REDACTED]
29. The landlord testified that when the tenant fell in arrears, they issued a termination notice under Section 19 of the Act (**Exhibit L # 3**) to terminate the tenancy on 28 March 2021. The landlord testified that the notice was served personally and as of the hearing date (04 May 2021), the tenant remained in the unit. The landlord testified that there is 1 adult living in the unit.

Tenant Position

30. The tenant added only that she is attempting to move and understands what the landlord is seeking.

Analysis

31. Established by undisputed statement of fact above, the rental agreement is a written fixed term 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.
32. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

33. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenant a termination notice to vacate the property not less than 10 days after the notice is served on the tenant. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 16 March 2021 with a termination date of 28 March 2021. As established above and undisputed by the tenant, rent had been in arrears since 01 February 2021. 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).
34. 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.*

35. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
36. 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 certifying the orders or with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

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

Summary of Decision

38. The landlord is entitled to the following:

- a) Rent Owing (up to and including 04 May 2021) \$681.04
- b) Late Fees 19.00
- c) Total Owing to the Landlord \$700.04**

- d) Vacant Possession of the Rented Premises
- e) A daily rate of rent set at **\$23.01** beginning **05 May 2021** and continuing until the day the landlord obtains vacant possession of the Rented Premises.
- f) Any incurred costs associated with certifying the attached orders
- g) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

07 May 2021

Date