

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0154-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm on 20 April 2021 & at 9:30 am on 30 April 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 the landlord, participated in the hearings. (*Affirmed*).
3. The respondent, [REDACTED] hereafter referred to as the tenant, participated in the hearings. (*Affirmed*).
4. The details of the claims were presented as a written monthly agreement with rent set at \$1425.00 per month and due on the 1st of each month and a security deposit in the amount of \$500.00 was collected on or about 01 November 2019.
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 originating application involved the rental property at [REDACTED]. The counter claim indicated that two rental properties were involved, both [REDACTED] and [REDACTED]. This is not permitted under a counterclaim and the counterclaim will only deal with [REDACTED]. Should the landlord or tenant wish to file a second claim on the apartment [REDACTED] they are certainly free to do this within the bounds of the *Residential Tenancies Act*, 2018.

7. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **08 April 2021** by serving the original documents to the tenant via email to the address: [REDACTED] & attaching the email verification for service.
8. The affidavit submitted by the tenant shows that the landlord was served with the notice of this hearing on the **20 April 2021** by serving the original documents to the landlord via email to the address: [REDACTED] & attaching the email verification for service. There was no Affidavit of Service filed, however, the landlord agreed to waive any right of service and continue with the hearing.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Payment of rent owing **\$3225.00**;
 - b) Vacant possession of the rented premises;
 - c) Hearing expenses.
10. The tenant is seeking the following:
 - d) Payment of rent **\$2500.00**;
 - e) Payment of Utilities **\$1760.00**;
 - f) Validity of the Termination Notice;
 - g) 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 - \$3225.00

Relevant Submissions

Landlord Position

13. The landlord stated that they had entered into a written monthly rental agreement with the tenant. The agreed rent is set at \$1425.00 per month with utilities included and due on the 1st day of each month with a security deposit in the amount of \$500.00 collected on this tenancy on or about 01 November 2019.
14. The landlord testified that the tenant has rented both [REDACTED] Street under separate rental agreements. He testified that the original rental was for [REDACTED] only and a termination notice was issued for this unit. The landlord presented a rental ledger of payments (**Exhibit L # 1**) showing rental arrears in the amount of \$3225.00 as of 30 April 2021.
15. The landlord further submitted a copy of the rental agreement (**Exhibit L # 6**) to establish the tenancy. The landlord stated as of the hearing date 30 April 2021 the tenant remained in the unit and rent is outstanding.

Tenant Position

16. The tenant disputes the landlord's claim. The tenant testified that the landlord has not been paying the utilities (Electric and Oil) on the property and they are facing a cut off notice from NL Power. The tenant testified that when the oil was stopped, they began to use four 1500 watt electric heaters.
17. The tenant indicated that he is using the property to grow marijuana plants under license and the landlord was fully aware of the operation in the property. The tenant testified that when he also rented the lower unit and the oil and utilities were threatened, he began to make payment to the utilities and submitted a list of his payments (**Exhibits T # 2**) into evidence.

Analysis

18. I have reviewed the testimony and evidence of the landlord 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.
19. The claim and counterclaim started out as being a little convoluted with the two separate units being wrapped into one. In an effort to unwrap the records I have put the landlord records into a table below:

Table # 1: Extraction of Landlord Rental Records

Date	Comment	Due	Payment	Balance
	Bal. Forward	\$ -	\$ -	\$0.00
1-Nov-19	Rent Due	\$ 1,425.00		(\$1,425.00)
1-Nov-19	Rent Payment		\$ 1,425.00	\$0.00
1-Dec-19	Rent Due	\$ 1,425.00		(\$1,425.00)
16-Dec-19	Rent Payment		\$ 1,425.00	\$0.00
1-Jan-20	Rent Due	\$ 1,425.00		(\$1,425.00)
1-Feb-20	Rent Due	\$ 1,425.00		(\$2,850.00)
3-Feb-20	Rent Payment		\$ 375.00	(\$2,475.00)
4-Feb-20	Rent Payment		\$ 400.00	(\$2,075.00)
20-Feb-20	Rent Payment		\$ 660.00	(\$1,415.00)
1-Mar-20	Rent Due	\$ 1,425.00		(\$2,840.00)
2-Mar-20	Rent Payment		\$ 400.00	(\$2,440.00)
4-Mar-20	Rent Payment		\$ 605.00	(\$1,835.00)
24-Mar-20	Rent Payment		\$ 1,495.00	(\$340.00)
1-Apr-20	Rent Due	\$ 1,425.00		(\$1,765.00)
13-Apr-20	Rent Payment		\$ 600.00	(\$1,165.00)
16-Apr-20	Rent Payment		\$ 600.00	(\$565.00)
1-May-20	Rent Due	\$ 1,425.00		(\$1,990.00)
1-Jun-20	Rent Due	\$ 1,425.00		(\$3,415.00)
1-Jul-20	Rent Due	\$ 1,425.00		(\$4,840.00)
16-Jul-20	Rent Payment		\$ 2,000.00	(\$2,840.00)
1-Aug-20	Rent Due	\$ 1,425.00		(\$4,265.00)
3-Aug-20	Rent Payment		\$ 400.00	(\$3,865.00)
6-Aug-20	Rent Payment		\$ 650.00	(\$3,215.00)
11-Aug-20	Rent Payment		\$ 1,145.00	(\$2,070.00)
1-Sep-20	Rent Due	\$ 1,425.00		(\$3,495.00)
9-Sep-20	Rent Payment		\$ 1,000.00	(\$2,495.00)
10-Sep-20	Rent Payment		\$ 1,000.00	(\$1,495.00)
15-Sep-20	Rent Payment		\$ 1,000.00	(\$495.00)
18-Sep-20	Rent Payment		\$ 495.00	\$0.00
1-Oct-20	Rent Due	\$ 1,425.00		(\$1,425.00)
5-Oct-20	Rent Payment		\$ 1,425.00	\$0.00
1-Nov-20	Rent Due	\$ 1,425.00		(\$1,425.00)
26-Nov-20	Rent Payment		\$ 1,425.00	\$0.00
1-Dec-20	Rent Due	\$ 1,425.00		(\$1,425.00)
21-Dec-20	Rent Payment		\$ 1,400.00	(\$25.00)
1-Jan-21	Rent Due	\$ 1,425.00		(\$1,450.00)
1-Feb-21	Rent Due	\$ 1,425.00		(\$2,875.00)
11-Feb-21	Rent Payment		\$ 250.00	(\$2,625.00)
23-Feb-21	Rent Payment		\$ 1,750.00	(\$875.00)
1-Mar-21	Rent Due	\$ 1,425.00		(\$2,300.00)
26-Mar-21	Rent Payment		\$ 500.00	(\$1,800.00)
1-Apr-21	Rent Due	\$ 1,425.00		(\$3,225.00)

20. The above records are detailed with dates providing an organized record of payments. A comparison was attempted with the tenant's records of payments against these records and there was no similar record of any of the tenant payments within the landlord's records. A further analysis of the NL Power Invoices submitted by the landlord was undertaken, which would show any payments made by the tenant directly to NL Power. This too was of no value in determining the accuracy of the tenant records as none of the payments listed matched the NL Power records. To add more confusion, the tenant records are not dated by year, so an accurate reconciliation is impossible. The tenant has not presented a case that supports his claims that rent was paid by the payment of the utilities and cash to the landlord.
21. 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 **\$3225.00**. That calculation for the daily rate of rent is ($\$1425.00 \times 12 \text{ months} = \$17,100.00 \div 365 \text{ days} = \46.85 per day).
22. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$46.85** beginning on 01 May 2021 and continuing until the day the landlord obtain vacant possession of the rented premises.

Decision

23. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 30 April 2021 **\$3225.00**
 - b) Total Arrears **\$3225.00**
 - c) **Total due to Landlord** **\$3225.00**
 - d) A daily rate beginning 01 May 2021 **\$46.85**

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

24. The landlord is seeking to recover possession of the rented premises located at
[REDACTED]
25. The landlord testified that the ongoing issues of rent payments with the tenant and the excessive power bills, a termination notice under Section 19 of the Act (**Exhibit L # 3**) to terminate the tenancy on 05 April 2021 was issued. In addition, the landlord also testified that prior to this notice being issued, he first issued a standard termination notice (**Exhibit L # 2**) under section 18 of the Act, to

terminate the tenancy on 30 April 2021. The landlord testified that the notices were served personally and as of the hearing date (30 April 2021), the tenant remained in the unit. The landlord testified that there is 1 adult living in the unit.

Tenant Position

26. The tenant disputes the claim of vacant possession saying he has paid his rent in cash or payments to the utilities.

Analysis

27. 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 18, 19(1)(b), (4) and 34 as well as the service requirements identified in Section 35.
28. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.
29. Section 18(2)(b) requires that the landlord shall give the tenant written notice that the rental agreement is terminated not less than 3 months before the end of the rental period where the premises is rented for month to month. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 05 January 2021 with a termination date of 30 April 2010. As established above and undisputed by the tenant, I find that as the date of termination identified on the notice is not less than 3 months before the end of the rental period from 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 18(2)(b).
30. 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 10 February 2021 with a termination date of 22 February 2021. As established above and undisputed by the tenant, rent had been in arrears since January 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).
31. Sections 19(4), 18(9) 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 18(9)

(9) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the person providing the notice;*
- (b) be given not later than the first day of a rental period;*
- (c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*
- (d) be served in accordance with section 35.*

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.*

32. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
33. According to the reasons identified above, I find that the termination notices 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

34. 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.

Issue 3: Hearing Expenses

Landlord Position

35. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Digital Government and Service NL [REDACTED] (Exhibit L # 4). The landlord is seeking this cost.

Tenant Position

36. The tenant paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Digital Government and Service NL [REDACTED] (Exhibit T # 1). The tenant is seeking this cost.

Analysis

37. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The expenses incurred 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*.
38. The landlord's claim has been successful and as such, I find the tenant is responsible to cover the landlord's reasonable expenses of the hearing.

Decision

39. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

40. The landlord is entitled to the following:

- a) Rent Owing (up to and including (30 April 2021)\$3225.00
- b) Hearing Expenses20.00
- b) Total Owing to the Landlord\$3245.00**
- c) Vacant Possession of the Rented Premises
- d) A daily rate of rent set at **\$46.85** beginning 01 May 2021 and continuing until the day the landlord obtains vacant possession of the Rented Premises.
- e) Any incurred costs associated with certifying the attached orders
- f) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

07 May 2021

Date