

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0198-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 01:07 pm on July 21, 2021 via teleconference.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord," attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant," also attended by teleconference.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1560.00, and
 - An order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018*: notice when failure to pay rent, section 21: notice where premises uninhabitable, section 34: requirements for notices, section 35: Service of documents and *The [REDACTED] Residential Property Standards By-Law*.

Preliminary Matters

7. The landlord amended his application at the hearing and stated that he was now seeking an order for a payment of \$3900.00.

Issue 1: Rent - \$3900.00

Relevant Submissions

The Landlord's Position

8. The landlord provided the rental agreement [REDACTED] #03) for [REDACTED] dated June 01, 2020 effective for one year ending on May 31, 2021 and thereafter the rental agreement is from month to month. The cost of rental is \$780.00 per month.
9. The tenant paid a damage deposit of \$500.00.
10. Included in the application, the landlord submitted a copy of the Rent Ledger [REDACTED] #02) for this calendar year and stated that at the time of the application, April 26, 2021, the tenant owed \$1,560.00. Currently, the tenant owes a balance of \$3,900.00.

The Tenant's Position

11. The tenant agrees with the rental agreement and states she took possession in May a few days before June 01, 2020.
12. The tenant agrees that she owes the amount of rent stated by the landlord.
13. The tenant understands that she has asked for time in the past to be able to pay monies owed, she stated that she intends to pay this rent in the upcoming weeks.

Analysis

14. With respect to the arrears being claimed, the landlord and tenant agree that rent is owed. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the day of the hearing and per diem thereafter.
15. I calculate the amount owing to be \$3658.44 (\$3120.00 owing for the period ending 30 June 2021 and \$538.44 for July 2021 (\$780.00 per month x 12 months = \$9360.00 per year ÷ 365 days = \$25.64 per day x 21 days)).

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$3658.44.
17. The tenant shall pay a daily rate of rent in the amount of \$25.64, beginning 22 July 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

The Landlord's Position

18. The Landlord served Notice to Terminate [REDACTED] #05) due to failure to pay rent on April 07, 2021 with a move out date of April 26, 2021 by attaching notice to tenant's door. Later the landlord sent notice by email and text message.
19. The Landlord was contact by NF Power Customer Relations [REDACTED] #01) to inform that the power had been cut at [REDACTED] on June 01, 2021 and was still off as of June 29, 2021.
20. The Landlord states that the power remains off as of the hearing date.
21. The Landlord served Notice to Terminate Early [REDACTED] #04) due to Premises uninhabitable on June 30, 2021 effective the same day.

The Tenant's Position

22. The Tenant acknowledges receipt of all Notices by email and/or text. She did not receive notices affixed to her front door.
23. The Tenant confirms that the power is still off at the residence in question.

Analysis

24. 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),***
 - (a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and***
 - (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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

25. On 07 April 2021, when the landlord issued the tenant the termination notice under this section of the Act, the tenant had been in arrears since at least the beginning of March 2021. No payments were made after the notice was issued and since then the rent for May, June and July 2021 has also come due. As the notice meets all the requirements set out in this section of the Act, it is a valid notice and the tenant ought to have moved out on 26 April 2021.
26. The second notice the landlord had issued the tenant on 30 June 2021 is also valid.
27. In [REDACTED] the municipality where this rental unit is located, the “minimum standards and regulations for the occupancy and maintenance of residential property” are to be found in *The [REDACTED] Residential Property Standards By-Law*.
28. According to that by-law:

GENERAL DUTIES AND OBLIGATIONS

4.1 No person shall use, permit the use of, rent, or offer to rent any dwelling, dwelling unit, or room in violation of any provision of this By-Law or any other by-law or regulation of the City.

29. In short, a rental unit that is not maintained in accordance with the standards set out in that by-law (or other by-laws or regulations of the City) is not to be used by a person as a dwelling unit and is, therefore, “unfit for habitation.”
30. Section 32 of this by-law states:

ELECTRICAL

32.1 Every dwelling shall be connected to an electrical supply system and shall be wired for electricity.

32.2 An adequate supply of electric power shall be available at all times in

all parts of every occupied dwelling.

31. The tenant acknowledged that because of her outstanding electrical bills, Newfoundland Power had disconnected the electricity to the rental unit. In so doing, the tenant had caused the rental unit to be in violation of section 32 of *The [REDACTED] Residential Property Standards By-Law* and, therefore, had made the unit unfit for habitation.
32. Section 21 of the *Residential Tenancies Act, 2018* states:

Notice where premises uninhabitable

21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises effective immediately.

(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.

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

(a) be signed by the person providing the notice;

(b) state the date 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

(c) be served in accordance with section 35.

33. As the tenant had made the rental unit unfit for habitation, I find that the landlord was also in a position, on 30 June 2021, to issue the tenant a termination notice under section 21 of this Act. As the landlord's notice meets all the requirements set out in this section of the Act, the notice is valid.

Decision

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

Issue 3: Security Deposit

35. The landlord stated that the tenant had paid a security deposit of \$500.00 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

36. The landlord is entitled to the following:

- A payment of \$3158.44, determined as follows:
 - a) Rent Owing\$3658.44
 - b) **LESS: Security Deposit..... (\$500.00)**
 - c) Total**\$3158.44**
- A payment of a daily rate of rent in the amount of \$25.64, beginning 22 July June 2021 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,
- The tenant shall also 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.

29 July 2021

Date

