

Residential Tenancies Tribunal

Application 2022 No. 118NL

Decision 22-0118-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 27 April 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$120.89,
 - An order for a payment of late fees in the amount of \$75.00, and
 - An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 15 and 19 of the *Residential Tenancies Act, 2018*, and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must

be served with claim and notice of the hearing 10 clear days prior to the hearing date 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 has been properly served. With her application, the landlord submitted an affidavit stating that the tenant had been served with the application, by registered mail, and the associated tracking history shows that it was sent on 28 February 2022. Although the tenant never did collect that mail, section 42 of the *Act* states that, where an application has been sent by registered mail, it is considered to have been served on the 5th day after mailing—in this case, 05 March 2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

7. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$1114.89.

Issue 1: Rent - \$1114.89

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 01 June 2021. The current rent is set at \$835.00 and the landlord stated that the tenant had paid a security deposit of \$549.00.
9. The landlord submitted rent records at the hearing (████ #1) showing the rent payments the tenant had made since he moved into the property. The landlord pointed out that the tenant's rent is subsidized by both Newfoundland Labrador Housing (NLH) and the Department of Advanced Education, Skills and Labour (AES) and these combined payments are supposed to cover the rent every month.
10. The landlord pointed out that in 2021, there were several months where AES did not pay enough of a subsidy to cover all of the tenants rent and at the end of February 2022, the tenant a balance owing of \$120.89. She also pointed out that in March 2022, NLH paid no rent on the tenant's behalf, and AES paid nothing for March or April 2022.
11. Without those payments, the landlord's records show that the tenant is currently in arrears in the amount of \$1114.89 for the period ending 30 April 2022.
12. These records show that up to November 2021, the tenant always paid the required rent, each month, and on the day it was due. Since December 2021, however, although the tenant is making regular payments, those payments are each around several hundred dollars short of the required \$845.00.

Analysis

13. I accept the testimony of the landlord in this matter and I find that the government agencies which had been subsidizing the tenant's rent failed to make several payments on his behalf, leading to an accumulation of rental arrears.
14. Based on the records submitted by the landlord, I find that that the tenant owes \$1114.89.

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$1114.89.

Issue 2: Late Fees - \$75.00

16. The landlord has assessed a late fee of \$75.00.

Analysis

17. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

18. As the tenant has been in arrears since at least February 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

19. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

20. With her application, the landlord submitted a copy of a termination notice that she stated was posted to the tenant's door on 03 February 2022 (█ #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 14 February 2022.
21. The landlord stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises.

Analysis

22. 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),

...

(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.

23. On 03 February 2022, when the termination notice was issued, the tenant was in arrears in the amount of \$120.89, and had been in rental arrears since the beginning of that month. Since the notice was issued, the landlord has only received 1 payment for rent, from NLH, on 01 April 2022, in the amount of \$676.00.

24. However, a landlord is only permitted to issue a termination notice under this section of the *Act* when the tenant has been in rental arrears for at least 5 full days. On 31 January 2022, the tenant had a rent credit of \$555.11cr. Although the landlord did not receive the full amount of rent on 01 February 2022, the earliest she could have issued him a termination notice under this section would have been 07 February 2022, 5 full days after he had fallen into arrears. Issuing a notice on 03 February 2022 was 4 days too soon. For that reason, the landlord's termination notice is not valid.

Decision

25. The termination notice issued to the tenant on 03 February 2022 is not a valid notice.
26. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 4: Hearing Expenses

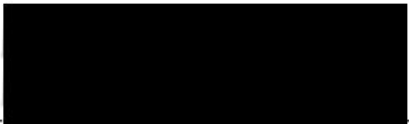
27. As the landlord's claim has been partly successful, the tenant shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

28. The landlord is entitled to a payment of \$1209.89, determined as follows:
- | | |
|---------------------------|------------------|
| a) Rent Owing | \$1114.89 |
| b) Late Fees | \$75.00 |
| c) Hearing Expenses | \$20.00 |
| d) Total | <u>\$1209.89</u> |
29. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

29 April 2022

Date


John R. Cook
Residential Tenancies Tribunal