

Residential Tenancies Tribunal

Application 2024-0099-NL

Decision 2024-0099-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:47 PM on 28 February 2024 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as “landlord1”, and [REDACTED] hereinafter referred to as “landlord2”, attended the hearing.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, attended the hearing.
4. The details of the claims were presented as a written monthly rental agreement (**Exhibit L # 1**) with rent set at \$1,700.00, including heat and light, and due on the 1st of each month. There was a security deposit set in the amount of \$1,000.00 collected in full on 30 February 2023, and the tenant has resided at [REDACTED] since 1 February 2023. On the date of hearing, the tenant remained in the unit. The landlords issued the tenant a notice to terminate under section 19 of the *Residential Tenancies Act*, 2018 on 16 November 2023 with a request for the tenant to be out of the rental by 26 November 2023 (**Exhibit L # 2**). The landlords issued the tenant another notice to terminate under section 19 on 24 January 2024 with a request for the tenant to be out of the rental by 5 February 2024 (**Exhibit L # 3**). The tenant was served an application for dispute resolution by e-mail [REDACTED] on 16 February 2024 at approximately 3:31 PM (**Exhibit # 4**).
5. In a proceeding under the *Residential Tenancies Act*, 2018, 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 landlords amend their application at the hearing and were seeking outstanding in rental arrears is **\$7,650.00** up to and including 29 February 2024, and were also seeking payment of March 2024 rent.

7. Both landlords offered testimony during the hearing and did not call any witnesses.
8. The tenant offered testimony during the hearing and did not call any witnesses.

Issues before the Tribunal

9. The landlords are seeking the following:
 - An order for payment of rent in the amount of **\$7,650.00**;
 - Late Fees in the amount of **\$300.00**;
 - An order for vacant possession of the rented premises; and,
 - Hearing Fee in the amount of **\$20.00**.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
11. Also relevant and considered in this case is sections, 19, 34, 35 and 42 of the *Residential Tenancies Act*, 2018. Also, section 12-1 of the *Residential Tenancies Program Policy Manual*.

Issue 1: Rent Owing- \$7,650.00

Landlords Position

12. Landlord1 testified the tenant moved into 50 Jordan Place, St. John's, NL in February 2023 with monthly rent set at \$1,700.00 including heat and light (**Exhibit L # 1**). Landlord1 stated they have been accommodating of the tenant however she has not paid rent for October 2023, November 2023, December 2023, January 2024 and, for February 2024 (**Exhibit L # 5**).
13. Landlord1 stated the tenant was last at a zero balance in September 2023.
14. Landlord2 testified the tenant was issued two notices to terminate in November 2023 (**Exhibit L # 2**) and in January 2024 (**Exhibit L # 3**) by electronic mail. Landlord2 stated the tenant did make a payment of \$850.00 on 1 February 2024 and the rental arrears currently owing is \$7,650.00.

Tenant Position

15. The tenant did not dispute that she received the two termination notices or the Application for Dispute Resolution. She testified she has experienced financial difficulties which contributed to rental arrears.

16. The tenant stated her last payment of rent was in the amount of \$850.00 on 5 February 2024 and she did not dispute that she was in rental arrears in the amount of \$7,650.00.

Analysis

17. Non-payment of rent is a violation of the rental agreement. The landlords had amended the claim at the outset to add rent to include rent between 1 October 2023 and 31 March 2024. This tribunal does not consider future rent.
18. I accept the landlords claim that the tenant has not paid rent as required. I also accept testimony and evidence that the tenant carried forward rental arrears in the amount of **\$6,800.00** up to 31 January 2024.
19. The landlord submitted termination Notice under Section 19, notice where failure to pay rent with a requested possession of the premises by 5 February 2024 (**Exhibit L # 2**).
20. Rent for February 2024 can only be calculated up to and including the day of the hearing (28 February 2024). That calculation is $(\$1,700.00 \times 12 \text{ months} = \$20,400.00 \div 366 \text{ days} = \$55.74 \text{ per day} \times 28 \text{ days} = \$1,560.72 - \text{Payment of } \$850.00 \text{ on 5 February 2024} = \$710.72)$. Rent for 1 February 2024 – 28 February 2024 is **\$710.72**.
21. Additionally, the tenants are responsible for rent on a daily basis in the amount of **\$55.74** beginning on 29 February 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

22. The tenant shall pay the full amount of rental arrears owing in the amount of **\$7,510.72**.

Issue 2: Late Fees- \$300.00

23. During the hearing, the landlord offered testimony that the tenant has carried late fees since November 2023 as he was last at a zero balance on 1 October 2023.
24. Section 15 of the *Residential Tenancies Act*, 2018 offers clear direction regarding fees for failure to pay rent. As noted in section 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*".
25. 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.

26. I find that the tenant has owed late payment fees in the maximum amount since November 2023 and the landlord is entitled to the maximum fee of \$75.00.

Decision

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

Issue 3: Vacant Possession of Rented Premises

28. The landlords issued the tenant a notice to terminate under section 19 of the *Residential Tenancies Act*, 2018 on 16 November 2023 with a request for the tenant to be out of the rental by 26 November 2023 (**Exhibit L # 2**). The landlords issued the tenant another notice to terminate under section 19 on 24 January 2024 with a request for the tenant to be out of the rental by 5 February 2024 (**Exhibit L # 3**).
29. The landlords stated the tenant has not vacated the rented premises as of the date of this hearing, and they are seeking an order for vacant possession.

Analysis

30. Section 19 of the *Residential Tenancies Act*, 2018 states:

a. Notice where failure to pay rent

b. 19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

i. (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

c. 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.

i. (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.

31. According to both landlord's testimonies, the tenant has carried forward rental arrears since October 2023. The tenant did not dispute this.
32. As the tenant has not paid the rental arrears prior to the termination date of February 5, 2024, and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

33. The landlords claim for an order for vacant possession succeeds.

Issue 4: Hearing Expenses- \$20.00

34. The landlords submitted a receipt for the hearing expense for the Application for Dispute Resolution in the amount of \$20.00 (**Exhibit L # 6**).

Analysis

35. I find the landlords are entitled to the **\$20.00** hearing expense reimbursement as their application succeeds.

Decision

36. The landlords claim for hearing expense succeeds in the amount of **\$20.00**.

Summary of Decision

37. The landlord is entitled to the following:

- A payment of **\$7,605.72**, as determined as follows:

a) Rent owing	\$7,510.72
b) Late Fees.....	\$75.00
c) Hearing Expense.....	\$20.00
d) Total.....	<u>\$7,605.72</u>
- An order for vacant possession of the rented premises,

- A payment of a daily rate of rent in the amount of **\$55.74**, beginning 29 February 2024 and continuing to the date the landlord obtains vacant possession of the rental unit,
- 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.

25 March 2024

Date



Michael J. Reddy
Residential Tenancies Office