

Residential Tenancies Tribunal

[REDACTED] Decision 19-0246-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 23 April 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", did not participate in the hearing. She was represented by [REDACTED] and a letter of authorization is on file.
3. [REDACTED], hereinafter referred to as "the tenant", also participated in the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$500.00;
 - b. 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*.

Issue 1: Rent Owing - \$500.00

Relevant Submissions

The Landlords' Position

7. The landlord and tenant entered into a monthly rental agreement in October 2017. The rental unit is a 3 bedroom apartment and the landlord occupied one of these rooms. The tenant had agreed to pay \$500.00 per month in rent and he paid a security deposit of \$250.00 before he moved into the unit.
8. In September 2018 the landlord left the province for work. Between September and December 2018 the landlord rented her room to another tenant, [REDACTED]. After [REDACTED] moved out, the landlord placed advertisements seeking a new roommate to share the apartment with the tenant.
9. With her application, the landlord attached a copy of an e-mail ([REDACTED] #1), sent to her by the tenant in January 2019, outlining a verbal agreement they had reached concerning the apartment. In that e-mail, the tenant writes:

I have agreed to begin paying you \$1000 per month as opposed to the \$500 I was paying before. This is in exchange for the understanding and agreement that you will no longer continue to look for another tenant to share this rental with me.

10. The landlord's representative stated that this increase in rent began in February 2019 and he submitted the landlord's bank statements at the hearing ([REDACTED] #2) showing that the tenant had paid the agreed \$1000.00 for both February and March 2019. These records also show, though, that the tenant had only paid \$500.00 for April 2019.
11. The landlord is seeking an order for a payment of the remaining \$500.00 that is owing for the month of April 2019.

The Tenant's Position

12. The tenant stated that in December 2018 he initially had an agreement with the landlord that he would be renting the whole apartment at the same rate of rent of \$500.00 but all the utilities would be transferred to his name. That agreement changed in January 2019 and instead of taking over the utilities, he would instead pay \$1000.00 per month in rent, commencing February 2019.
13. The tenant claimed that the agreement that he would pay an extra \$500.00 per month was in exchange for the right to be the sole occupant of the rental unit. He stated that the landlord returned to the unit in mid-March 2019 and informed him that she would be staying at the unit for the next 10 days and stated that there was nothing the tenant could do about it. In response, the tenant stated

that she could start advertising the unit for rent once more and he would revert to once again paying \$500.00 per month.

14. The tenant acknowledged that he had only paid \$500.00 for the month of April 2019 but he stated that this was because he had entered into a verbal agreement with the landlord that this would be the new rate of rent.

Analysis

15. There was no dispute that the landlord and tenant had agreed that in exchange for her promise not to seek another roommate for the tenant he would pay an extra \$500.00 per month in rent.
16. The dispute, rather, concerns the issue of whether or not the landlord and tenant had entered into a subsequent agreement, in March 2019, that the tenant would start paying \$500.00 per month, commencing April 2019.
17. I find that the tenant has failed to present enough evidence to establish that such an agreement exists. There is no written record of that agreement and I am not convinced that the description of the conversation the tenant had with the landlord, described in paragraph 13, above, meets the definition of an “agreement”. Rather, it appears to be a unilateral response, on the tenant’s part, to a disagreement he had with the landlord concerning what he believed was a contravention of their initial arrangement.
18. In addition, the text-message evidence submitted by the landlord (████ #3) also contradicts the tenant’s claim that they had reached an agreement that he was only supposed to pay \$500.00 per month. Instead, these text-messages show that the landlord and tenant were actually disagreeing about that matter. As such, I find that there was no agreement that the rent was reduced to \$500.00 for April 2019.
19. As the tenant only paid \$500.00 in rent for April 2019, I find that the landlord’s claim succeeds. As she is also seeking an order for vacant possession of the rented premises I find that the landlord is entitled to a payment of rent to the date of the hearing and a per diem thereafter. I calculate that amount to be \$256.24 (\$1000.00 per month x 12 months = \$12,000.00 per year ÷ 365 days = \$32.88 per day x 23 days = \$756.24 less the payment of \$500.00 received on 06 April 2019 = \$256.24).

Decision

20. The landlord’s claim for a payment of rent succeeds in the amount of \$256.24.
21. The tenant shall pay a daily rate of rent in the amount of \$32.88, beginning 24 April 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

22. With her application, the landlord submitted a copy of a termination notice (■ #5) which her representative stated was delivered to the tenant on 07 April 2019.
23. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 18 April 2019.
24. The landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

25. The tenant acknowledged receiving this notice on 07 April 2019.

Analysis

26. 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.

27. According to the testimony and evidence submitted at the hearing, on 07 April 2019 the tenant was in arrears in the amount of \$500.00 and had been in arrears since the beginning of that month. The tenant has made no payments to the landlord since the notice was issued and the balance remained at \$500.00 on the effective termination date set out in that notice.

28. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

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

30. The tenant shall 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.

Issue 3: Security Deposit

31. The tenant paid a security deposit of \$250.00 in September 2017. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

32. The landlord is entitled to the following:

- A payment of \$6.24, determined as follows
 - a) Rent Owing\$256.24
 - b) **LESS: Security Deposit**.....(\$250.00)
 - c) Total Owing to Landlord\$6.24
- A payment of a daily rate of rent in the amount of \$32.88, beginning 24 April 2019 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.

30 April 2019

Date

John R. Cook
Residential Tenancies Tribunal