

Residential Tenancies Tribunal

Decision 19-287-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 07 May 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", participated in the hearing by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate 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 \$800.00,
 - b. An order for a payment of late fees, and
 - c. 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 are sections 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach him by telephone from the hearing room. 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. The landlord submitted an affidavit stating that the tenant was served with notice of the hearing, by e-mail, on 23 April 2019 and he has had 13 days to provide a response. The landlord also submitted a copy of that e-mail as well as a text-message the tenant had sent to the landlord in which he provides her with that e-mail address. 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.

8. The landlord amended her application at the hearing and stated that she was seeking an additional \$800.00 in rent for a total claim of \$1600.00.

Issue 1: Rent Owing - \$1600.00

Relevant Submissions

9. The landlord stated that she had entered into a monthly rental agreement with the tenant on 05 March 2019. The agreed rent was set at \$800.00 per month and the tenant had paid a security deposit of \$600.00.
10. With her application, the landlord submitted a copy of her rent records (█ #1). According to these records the tenant has only made 1 rent payment: \$800.00, paid on 05 March 2019, for the month of March 2019. No payments have been made for April or May 2019.
11. The landlord is seeking an order for a payment of rent for these 2 months in the amount of \$1600.00.

Analysis

12. I accept the landlord's claim that the tenant had not paid rent as required. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate the amount owing to be \$984.10 (\$800.00 owing for April 2019 and \$184.10 for May 2019 (\$800.00 per month x 12 months = \$9600.00 per year ÷ 365 days = \$26.30 per day x 7 days = \$184.10)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$984.10.

15. The tenant shall pay a daily rate of rent in the amount of \$26.30, beginning 08 May 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

16. The landlord has assessed late fees.

Analysis

17. Section 15.1 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.

18. The minister has set the following fees:

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.

Decision

19. As the tenant has been in arrears since 02 April 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

20. With her application, the landlord submitted a copy of a termination notice ([REDACTED] #2) which she stated she had sent to the tenant as a text-message on 16 April 2019. A copy of that text-message was also submitted at the hearing ([REDACTED] #3).

21. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 27 April 2019.
22. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

23. 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.

24. According to the landlord's testimony, on 16 April 2019 the tenant was in arrears in the amount of \$800.00 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 since then rent for May 2019 has also come due.
25. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. 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 4: Security Deposit

28. The landlord stated that the tenant had paid a security deposit of \$600.00 and according to her application that deposit was paid on 01 December 2018. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

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

Summary of Decision

30. The landlord is entitled to the following:

- A payment of \$479.10, determined as follows
 - a) Rent Owing\$984.10
 - b) Late Fees\$75.00
 - c) Hearing Expenses\$20.00
 - d) **LESS: Security Deposit.....(\$600.00)**
 - e) Total Owing to Landlord\$479.10
- A payment of a daily rate of rent in the amount of \$26.30, beginning 08 May 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.

09 May 2019

Date

John R. Cook
Residential Tenancies Tribunal