

## Residential Tenancies Tribunal

Decision 19-299-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:20 am on 03 June 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated in the hearing. His co-respondent, [REDACTED], did not participate.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$3338.00;
  - b. An order for a payment of hearing expenses in the amount of \$20.00; and
  - c. 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 is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

### Preliminary Matters

6. The respondent, [REDACTED], was not present or represented at the hearing. 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 she has been properly served. With her application the landlord submitted an affidavit stating that [REDACTED] had been served with notice of the hearing, by registered letter, on 26 April 2019 and the associated tracking history shows that [REDACTED] signed for that letter on 30 April 2019. She has had 33 days to provide a response. As [REDACTED] was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended the claim at the hearing and stated that she was now seeking \$3951.00 in rent arrears.

### **Issue 1: Rent - \$3951.00**

#### **Relevant Submissions**

##### The Landlord's Position

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 09 January 2018 and a copy of that executed agreement was submitted with her application ([REDACTED] #1). The agreed rent is set at \$756.00.
9. The landlord submitted rent records at the hearing showing the payments she had received from the tenant since he had moved into the unit ([REDACTED] #2). These records show that the tenant last had a zero-balance in August 2018 and since that time only 3 payments have been made to the landlord, totalling \$1875.00. The records show that the tenant is currently in arrears in the amount of \$3951.00.

##### The Tenant's Position

10. The tenant did not dispute the landlord's records of the payments that he made during his tenancy and he acknowledge that he is in arrears in the amount of \$3951.00.

#### **Analysis**

11. As the tenant did not contest this portion of the landlord's claim and as he acknowledged that he owes \$3951.00, the landlord's claim succeeds.
12. However, as the landlord is also seeking an order for vacant possession of the rental unit, 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 rent owing to the date of the hearing to be \$3269.55 (\$3195.00 for the period ending 31 May 2019 and \$74.55 for June 2019 (\$756.00 per month x 12 months = \$9072.00 per year ÷ 365 days = \$24.85 per day x 3 days = \$74.55)).

## **Decision**

14. The landlords' claim for a payment of rent succeeds in the amount of \$3269.55.
15. The tenant shall pay a daily rate of rent in the amount of \$24.85, beginning 04 June 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

## **Issue 2: Vacant Possession of Rented Premises**

### **Relevant Submissions**

#### The Landlord's Position

16. With her application, the landlord submitted a copy of a termination notice (■ #3) which she stated was sent to the tenant by registered letter on 04 February 2019. This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 25 February 2019.
17. The landlord had also submitted a copy of the tracking history (■ #4) showing that this notice was signed for by the tenant on 06 February 2019.
18. The landlords' rent records show that the tenant was in arrears in the amount of \$2758.00 when the notice was issued and the tenant made 1 payment of \$775.00 in February 2019, reducing the balance to \$1983.00. Since then, rent has come due for March, April, May and June 2019 and the landlord has only received 1 payment of \$800.00, in late May 2019.
19. The tenant has not vacated the rented premises as required and the landlord is seeking an order for vacant possession of the rented premises.

#### The Tenant's Position

20. The tenant acknowledged receiving the termination notice and he did not dispute the landlord's record of the payments he had made.

### **Analysis**

21. 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.*

22. According to the landlord's rent records, the tenant was in arrears 6 months when the termination notice was issued and he failed to reduce the balance owing to zero before the effective termination date set out in the notice.
23. As the notice meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.

### **Decision**

24. The landlord's claim for an order for vacant possession of the rented premises succeeds.
25. 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: Hearing Expenses**

26. The landlord submitted a hearing expense claim form and a receipt showing that she had paid \$20.00 to file this application. As the landlords' claim has been successful, the tenant shall pay this hearing expense.

### **Summary of Decision**

27. The landlords is entitled to the following:

- A payment of \$4989.50, determined as follows:

- a) Rent Owing .....\$3269.55
- b) Hearing Expenses.....\$20.00
- c) Total Owing to Landlord .....\$3289.55

- A payment of a daily rate of rent in the amount of \$24.85, beginning 04 June 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.

14 June 2019

\_\_\_\_\_  
Date

\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal