

Residential Tenancies Tribunal

Decision 19-334-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:50 am on 16 May 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]
[REDACTED], hereinafter referred to as "the landlord".
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:
 - An order for vacant possession of the rented premises,
 - A payment of \$1400.00 in compensation for damages,
 - A payment of rent in the amount of \$412.50,
 - A payment of late fees in the amount of \$75.00,
 - Authorization to retain the security deposit of \$581.25.

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 10, 15 and 22 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 her 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 respondents' absence so long as she has been properly served. The landlord submitted an affidavit stating that the tenant was served with notice of the hearing, by e-mail, on 03 May 2019 and she has had 12 days to provide a response. The landlord also submitted a copy of that e-mail as well as a copy of her rental application showing that she had provided that e-mail address to the landlord. 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 her absence.
8. The landlord amended her application at the hearing and removed her claim for compensation for damages.

Issue 1: Rent - \$412.50

Issue 2: Late Fees - \$75.00

Relevant Submissions

9. The landlord stated that the tenant had moved into the rental unit in September 2018 as a roommate of the 2 people living there at the time who were in a rental agreement with the landlord. The 2 individuals vacated the unit and on 01 December 2018 the tenant then entered into a monthly rental agreement with the landlord. A copy of that agreement was submitted at the hearing. The agreed rent is set at \$775.00 per month and the tenant paid a security deposit of \$581.25.
10. The landlord submitted her rent records at the hearing showing the payments she had received from the tenant since she started paying the rent in November 2018. According to these records, the tenant had been paying the required \$775.00 each month, except for December 2018. For that month, the landlord had only received \$387.50, paid on 30 November 2018, leaving a balance of \$387.50 which she has been carrying ever since.
11. In addition to these rent payments, the tenant had also made a payment \$50.00 on 01 March 2019 as the landlord had charged late fees of \$75.00 the previous month.
12. The landlord is seeking an order for a payment of \$412.50 for rent and late fees.

Analysis

13. I accept the landlord's testimony in this matter and I agree with her that the tenant had not paid rent as required. I also agree with her that as the tenant had fallen in arrears in December 2018 she was entitled to assess late fees in the amount of \$75.00 in accordance with section 15 of the *Residential Tenancies Act, 2018*.
14. As the landlord is also seeking an order for 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.
15. I calculate that amount to be \$45.18 (\$412.50 for the period ending 30 April 2019 less a credit of \$367.32cr for May 2019 (\$775.00 per month x 12 months = \$9300.00 per year ÷ 365 days = \$25.48 per day x 16 days = \$407.68 less the payment of \$775.00 made on 01 May 2019 = \$367.32cr)).

Decision

16. The landlord's claim for rent and late fees succeeds in the amount of \$45.18.
17. The tenant shall pay a daily rate of rent in the amount of \$25.48, beginning 17 May 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 3: Vacant Possession of Rented Premises

18. The landlord testified that she had been receiving complaints from the occupants of the apartment located directly above the tenant's about the smell of cigarette smoke. The landlord stated that as a result of those complaints she carried out an inspection of the rental unit on 17 April 2019 and she submitted photographs at the hearing showing the condition of the unit on that date (█ ##10-21).
19. These photographs show that there were several large holes in the walls in the rental unit and that the blinds in some of the windows had been damaged and needed to be replaced. These photographs also show that a closet door was damaged and had been removed and the tenant had been using blankets as window coverings. She also complained that the apartment was very unkempt and further photographs show that there was garbage littering the property. The landlord also confirmed that there was a smell of cigarette smoke in the unit and she pointed to a photograph showing that there she found an astray, overflowing with cigarette butts, inside the unit.
20. As a result of that inspection, the landlord issued the tenant a Notice to Effect Repairs (█ #8) on 23 April 2019 requiring her to have the following items addressed:

- Mitigation of smell of cigarette smoke
- Replace damaged blinds
- Remove blankets from windows
- Repair broken doors
- Repair holes in walls
- Remove garbage and debris

These repairs were to be completed by 29 April 2019.

21. The landlord testified that she returned to the rental unit on 29 April 2019 and although she did not enter the apartment, she claimed that she could see through the window into its interior and she confirmed that there were still holes in the walls and the blinds were still broken.
22. As the tenant had not complied with the notice to effect repairs, the landlord then issued the tenant a termination notice, by e-mail, on 02 May 2019. A copy of that notice as well as a copy of the e-mail was submitted at the hearing (████████ #7). That termination notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligations not met) and it had an effective termination date of 08 May 2019.
23. The landlord stated that the tenant has not vacated as required and she is seeking an order for vacant possession of the rented premises.

Analysis

24. Statutory condition 2, set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

and section 22 of this Act states:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(3) 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.

25. I accept the landlord's testimony in this matter and I agree with her that, on 17 April 2019, when the landlord conducted the inspection of the rented premises, the tenant was in breach of her rental agreement and in breach of her obligations as set out in statutory condition 2, quoted above. I also accept the landlord's claim that when she returned to the unit on 29 April 2019 she was able to determine that the tenant had not fully complied with her notice to carry out repairs and to come into compliance with statutory condition 2.
26. As the termination notice the landlord had issued to the tenant complies with the requirements set out in the Act, it is a valid notice.

Decision

27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. 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: Hearing Expenses

29. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application and a copy of a receipt for \$24.23 for the costs of developing photographs. As the landlord's claim has been successful, the tenant shall pay these expenses.

Issue 5: Security Deposit

30. The tenant paid a security deposit of \$581.25, in 2 installments, on 01 November and 13 November 2018. As the landlord's claim for rent (\$45.18) and hearing expenses (\$44.23) has succeeded, she shall retain \$89.41 of that deposit.

Summary of Decision

31. The landlord is entitled to the following:

- Authorization to retain \$89.41 of the security deposit.
- A payment of a daily rate of rent in the amount of \$25.48, beginning 17 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.

28 May 2019

Date

John R. Cook
Residential Tenancies Tribunal