

Residential Tenancies Tribunal

Decision 19-549-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 27 August 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", 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 \$2320.00;
 - 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*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and his telephone number is no longer in service. 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. The landlord submitted an affidavit with her application stating that the tenant was served with notice of the hearing by registered mail and the associated tracking history shows that that letter was delivered on 31 July 2019. The tenant has had 26 days to provide a response. 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.

7. The landlord amended the claim at the hearing and stated that she was now seeking \$2184.00 in rent arrears.

Issue 1: Rent - \$2184.00

Relevant Submissions

The Landlord's Position

8. The tenant's mother and disabled brother had been residing at the rental unit for approximately 20 years. The tenant's mother passed away in October 2018 and the tenant moved into that unit to provide care for his brother. He entered into a rental agreement with the landlord as sole leaseholder commencing 01 November 2019 and a copy of that agreement was submitted with the landlord's application (■■ #1). The agreed rent is set at \$614.00.
9. The landlord submitted rent records at the hearing showing the payments she had received since this new tenancy began (■■ #2). According to these records, although the tenant had received 3 rent abatements, he nevertheless failed to pay the full monthly rent from November 2018 to May 2019, leaving him with arrears totalling \$1692.00 at the end of May 2019.
10. The tenant reduced the arrears slightly by the end of July 2019, but he has failed to pay his rent for August 2019 bringing the total amount owing to \$2184.00. The landlord is seeking an order for a payment of that amount.

Analysis

11. I accept the landlord's claim that the tenant has not paid rent as required and her records show that the tenant is currently in arrears in the amount of \$2184.00.
12. 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 \$2115.13 (\$1570.00 for the period ending 31 July 2019 and \$545.13 for August 2019 (\$614.00 per month x 12 months = \$7368.00 per year ÷ 365 days = \$20.19 per day x 27 days = \$545.13)).

Decision

14. The landlords' claim for a payment of rent succeeds in the amount of \$2115.13.
15. The tenant shall pay a daily rate of rent in the amount of \$20.19, beginning 28 August 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 which she stated she had sent to the tenant by registered mail on 04 June 2019 (■ #3). This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 28 June 2019.
17. The landlord had also submitted a copy of the tracking history (■ #4) showing that the tenant had signed for this notice on 06 June 2019.
18. According to the landlord's rent records, the tenant was in arrears in the amount of \$2046.00 when he received the notice and although he had made several payments to the landlord prior to 28 June 2019, he failed to reduce the balance owing to zero and since then the arrears have increased.
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.

Analysis

20. 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.

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

Decision

22. The landlord's claim for an order for vacant possession of the rented premises succeeds.
23. 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

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

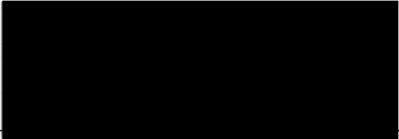
Summary of Decision

25. The landlord is entitled to the following:
- A payment of \$2135.13, determined as follows
 - a) Rent Owning\$2115.13
 - b) Hearing Expenses.....\$20.00
 - c) Total Owning to Landlord\$2135.13
 - A payment of a daily rate of rent in the amount of \$20.19, beginning 28 August 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 September 2019

Date



John R. Cook
Residential Tenancies Tribunal