

Residential Tenancies Tribunal

[REDACTED] Decision 19-554-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 04 September 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 \$1550.00;
 - 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 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 respondent's absence so long as she has been properly served. The landlord submitted an affidavit with her application stating that the tenant was personally served with notice of the hearing on 19 July 2019 and she has had 46 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 her absence.

7. The landlord amended the claim at the hearing and stated that she was now seeking \$2260.00 in rent arrears.

Issue 1: Rent - \$2260.00

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 25 July 2018 and a copy of that executed agreement was submitted with her application (█ #1). The current rent is set at \$355.00.
9. The landlord submitted rent records at the hearing (█ #2) showing the payments she had received from the tenant since the tenant moved in. These records show that the tenant had fallen into rental arrears immediately after she had moved in and the arrears have been steadily accumulating. The tenant has only made 2 payments in the last 6 months: \$500.00 on 23 April 2019 and \$500.00 on 26 June 2019. No payments have been made for July, August or September 2019.
10. The rent records show that the tenant currently has a balance of \$2260.00 and 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 \$2260.00.
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 \$1951.68 (\$1905.00 for the period ending 31 August 2019 and \$46.68 for September 2019 (\$355.00 x 12 months = \$4260.00 ÷ 365 days = \$11.67 per day x 4 days = \$46.68)).

Decision

14. The landlords' claim for a payment of rent succeeds in the amount of \$1951.68.
15. The tenant shall pay a daily rate of rent in the amount of \$11.67, beginning 05 September 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 12 April 2019 (█ #3). This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 30 April 2019.
17. The landlord had also submitted a copy of the tracking history (█ #4) showing that the tenant had signed for this notice on 18 April 2019.
18. According to the landlord's rent records, the tenant was in arrears in the amount of \$1485.00 when the notice was sent to her. The tenant did make 1 payment of \$500.00 on 23 April 2019, but this only reduced the balance owing to \$985.00 and the tenant remained in arrears when the notice expired on 30 April 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.

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. The landlord's evidence shows that the tenant had been in rental arrears for 10 months when the termination notice was issued and she failed to pay off those arrears by 30 April 2019, the effective termination date set out in the notice.
22. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

23. The landlord's claim for an order for vacant possession of the rented premises succeeds.
24. 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

25. The landlord submitted a receipt showing that she had paid \$20.00 to file this application. As the landlord's claim has been successful, the tenants shall pay this hearing expense.

Summary of Decision

26. The landlord is entitled to the following:
 - A payment of \$1971.68, determined as follows
 - a) Rent Owing\$1951.68
 - b) Hearing Expenses.....\$20.00
 - c) Total Owing to Landlord\$1971.68
 - A payment of a daily rate of rent in the amount of \$11.67, beginning 05 September 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.

11 September 2019

Date



John R. Cook
Residential Tenancies Tribunal