

Residential Tenancies Tribunal

Decision 19-571-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am 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".
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", 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 \$980.00,
 - b. An order for a payment of late fees in the amount of \$75.00,
 - c. An order for vacant possession of the rented premises, and
 - d. Authorization to retain the \$650.00 security deposit.

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 tenants were not present or represented at the hearing and no telephone number was available where they could be reached. 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 they have been properly served. The landlord submitted affidavits stating that the tenants were personally served with notice of the hearing on 18 July 2019 and they have had 39 days to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
8. The landlord amended his application at the hearing and stated that he is now seeking rent in the amount of \$2230.00.

Issue 1: Rent Owing - \$2230.00

Relevant Submissions

9. The landlord stated that he entered into a 1-year, fixed-term rental agreement with the tenants, commencing 01 November 2018, and a copy of that executed lease was submitted with his application (████ #1). The agreed rent was set at \$850.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$650.00.
10. The landlord submitted rent records at the hearing (████ #2) showing the payments he had received from the tenants since they had moved into the rented premises. According to these records, the tenants had a zero-balance at the end of February 2019 but they then fell into rental arrears on 02 March 2019. The tenants have made several payments since 02 March 2019 but they have failed to bring the balance owing back to zero.
11. The records show that the total rent owing now stands at \$2155.00 and the landlord is seeking an order for a payment of that amount, plus late fees.

Analysis

12. I accept the landlord's claim that the tenants 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 \$2059.65 (\$1755.00 for the period ending 31 July 2019 and \$304.65 for August 2019 (\$850.00 per month x 12 months = \$10,200.00 per year ÷ 365 days = \$27.95 per day x 27 days = \$754.65 for August 2019 less a payment of \$450.00 paid on 02 August 2019)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2059.65.
15. The tenants shall pay a daily rate of rent in the amount of \$27.95, beginning 28 August 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

16. The landlord has assessed late fees in the amount of \$75.00.

Analysis

17. Section 15 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 prescribed 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.

19. As the tenants have 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.

Decision

20. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

21. With his application the landlord submitted a copy of a termination notice (■■■#3) which he stated was hand delivered to the tenants on 22 May 2019.
22. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 03 June 2019.
23. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

24. 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.

25. According to the landlord's rent records, on 22 May 2019 the tenants were in arrears in the amount of \$850.00 and had been in arrears since the beginning of March 2019. The tenants have made several payments since that date, but they have failed to bring the balance back to zero and the areas have almost tripled since the notice was issued.

26. As the notice meets the timeframe requirements set out in section 19 of 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 tenants 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

29. The landlord stated that the tenants had paid a security deposit of \$650.00 on 11 October 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

30. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application and a receipt for \$50.00 for the costs of hiring a process server.
31. As the landlord's claim has been successful, the tenants shall pay the landlord's hearing expenses.

Summary of Decision

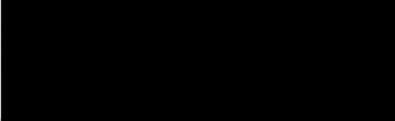
32. The landlord is entitled to the following:
- A payment of \$1554.65, determined as follows:

a) Rent Owing	\$2059.65
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$70.00
d) LESS: Security Deposit.....	(\$650.00)
e) Total	<u>\$1554.65</u>
 - A payment of a daily rate of rent in the amount of \$27.95, 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 tenants 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.

05 September 2019

Date



John R. Cook
Residential Tenancies Tribunal