

Residential Tenancies Tribunal

[REDACTED] Decision 19-614-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 12 September 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", 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 \$2150.00, and
 - b. 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 and 42 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were 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 respondents fail 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. With their application the landlords submitted an affidavit stating that landlord1 had sent the notice of the hearing to the tenants, by registered mail, on 07 August 2019. The tracking history associated with that letter shows that the tenants never did collect it and it was returned to the landlords on 10 September 2019. Section 42.(6) of the *Residential Tenancies Act, 2018* states that where an application is sent by registered mail it is considered to have been served on the respondents on the fifth day after mailing, which in this case would be 12 August 2019, 30 days prior to the hearing date. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

7. Landlord1 amended the application at the hearing and stated that he was now seeking an additional month's rent for a total claim of \$3100.00.

Issue 1: Rent - \$3100.00

Relevant Submissions

The Landlord's Position

8. Landlord1 stated that they had entered into a monthly rental agreement with the tenants in April 2019 and a copy of that agreement was submitted with their application (█ #1). The agreed rent is set at \$950.00 per month and it is acknowledged in the rental agreement that the tenants had paid a security deposit of \$712.50.
9. With their application the landlords had submitted rent records showing the payments they had received from the tenants since they moved into the rental unit (█ #2).
10. According to these records, no payments were made in June, August or September 2019 and the tenants only paid \$700.00 in July 2019.
11. Landlord2 stated that in August 2019 the tenants had sent him an e-Transfer for \$600.00 but they canceled that transfer after they had received the termination notice and before it could be accepted by landlord2.
12. The landlords are seeking an order for a payment of rent in the amount of \$3100.00.

Analysis

13. I accept landlord1's and lanlord2's claim that the tenants had not paid rent as required. As the landlords are also seeking an order for vacant possession of the

rented premises, I find that they are entitled to a payment of rent to the date of the hearing and a per diem thereafter.

14. I calculate the amount owing to be \$2524.76 (\$2150.00 for the period ending 31 August 2019 (\$950.00 + \$950.00 + 250.00) and \$374.76 for September 2019 (\$950.00 per month x 12 months = \$11400.00 per year ÷ 365 days \$31.23 per day x 12 days = \$374.76)).

Decision

15. The landlords' claim for a payment of rent succeeds in the amount of \$2524.76.
16. The tenants shall pay a daily rate of rent in the amount of \$31.23, beginning 13 September 2019, and continuing to the date the landlords obtain vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

17. With their application the landlords submitted a termination notice (■ #2) which landlord1 stated had been posted to the tenants' door on 05 August 2019.
18. This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 16 August 2019.
19. Landlord1 stated that the tenants have not vacated the rented premises as required and the landlords are 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. According to the landlords' rent records, on 05 August 2019 the tenants were in arrears in the amount of \$2150.00 and had been in arrears since the beginning of June 2019. No payments were made since the notice was issued and rent for September 2019 has since come due.
22. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

23. The landlords' claim for an order for vacant possession of the rented premises succeeds.
24. The tenants shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

Issue 4: Security Deposit

25. According to the landlords' application, the tenants paid a security deposit of \$712.50 on 15 April 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlords' claim has been successful, they shall retain the security deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

26. With their application, the landlords had submitted a receipt showing that they were charged \$17.15 to send the claim and notice of hearing to the tenants by registered mail and they also paid a fee of \$20.00 to file this application. As the landlords' claim has been successful, the tenants shall pay these hearing expenses.

Summary of Decision

27. The landlords are entitled to the following:
 - A payment of \$1849.41, determined as follows:

- a) Rent Owing\$2524.76
- b) Hearing Expenses.....\$37.15
- c) **LESS: Security Deposit..... (\$712.50)**
- d) Total Owing to Landlord**\$1849.41**

- A payment of a daily rate of rent in the amount of \$31.23, beginning 13 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 tenants shall also pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

17 September 2019

Date

John R. Cook
Residential Tenancies Tribunal

