

Residential Tenancies Tribunal

[REDACTED] Decision 19-663-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 19 September 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was not present at the hearing. She was represented by [REDACTED], hereinafter referred to as "the landlord", and a letter of authorization is on file. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$2200.00;
 - b. An order for vacant possession of the rented premises; and
 - c. Authorization to retain the security deposit of \$600.00

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 landlord amended his application at the hearing and stated that he was now seeking an additional \$1200.00 in rental arrears, for a total claim of \$3400.00.

Issue 1: Rent Owing - \$3400.00

Relevant Submissions

The Landlords' Position

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 November 2018. A copy of the lease was submitted with the landlord's application (█ #1).
8. The agreed rent is set at \$1200.00 per month and the landlord stated that it was agreed that the tenant could pay that rent in 2 installments of \$600.00, due on the first of the month and in the middle of the month.
9. The landlord submitted rent records with his application (█ #2) showing the payments he had received from the tenant since she moved into the rental unit.
10. These records show that the tenant's rent was paid and up-to-date for the period ending 28 February 2019. Since that date, the tenant has continued to make regular rent payments to the landlord but the records show that most of these payments were short by several hundred dollars.
11. The landlord only received \$700.00 in March 2019 and another \$700.00 in April 2019, leaving the tenant with a balance of \$1000.00. \$1500.00 was paid in May 2019, reducing the balance to \$700.00. The full rent was paid for June 2019 but only \$1000.00 was received for July 2019, bringing the balance up to \$900.00.
12. The landlord stated that no rent has been paid for August or September 2019.

The Tenant's Position

13. The tenant disputed the landlord's records and claimed that she had made more payments than what the landlord had listed. The tenant stated that her rent was paid by INT5ERAC e-Transfer and she stated that her banking statements show that she had sent an e-Transfer to the landlord on 08 March 2019 in the amount of \$800.80 and another payment on 11 March 2019 in the amount of \$805.00.
14. No evidence was submitted showing those payments and the tenant stated that her bank records do not show who these e-Transfers were sent to.
15. The tenant also claimed that she had sent 2 e-Transfers to the landlord on 01 August 2019 in the amounts of \$300.00 and \$325.00. She stated that these payments are able to be viewed on her smartphone but when she consulted her smartphone, she stated that her last payment to the landlord was in fact made on 16 July 2019 in the amount of \$1000.00. She stated that this payment was to cover the period from the middle of July to the middle of August 2019.

16. The landlord's records also record rent deductions the landlord had made on 3 occasions: \$95.91 for paint the tenant had purchased in November 2018, \$100.00 for the costs of repairing the garage door in February 2019 and \$40.00 for the costs of repairing the fence in June 2019. But the tenant claimed that the landlord had agreed to further deductions in the rent that are not shown on these records.
17. The tenant claimed that the garage door had broken 3 times, not once, and she claimed that rent had been reduced accordingly. She also claimed that there had been an infestation of insects at her unit and she had to hire a pest control company as well as dispose of all of her food. She claimed that it was agreed that she would receive further reductions in her rent.
18. Besides the reductions indicated on the landlord's records, he testified that there were no additional agreements that the tenant would receive any additional reductions in her rent. No written evidence of these agreements was submitted at the hearing.

Analysis

19. I accept the landlord's claim that the tenant had not paid rent as required and I also find that his records accurately reflect the payments he had received from the tenant.
20. The tenant claimed that she had agreements with the landlord that her rent was to be reduced on several occasions in compensation for repairs which had to be carried out at the unit, but besides her testimony, which was contradicted by the landlord, she provided no evidence to establish that claim.
21. The tenant also claimed that she had sent to the landlord more rent payments than those he had recorded, but again, the tenant presented no evidence showing that she had made such payments. In my experience adjudicating claims of a similar nature, where a payment is made by INTERAC e-Transfer, it is very simple to provide documentary proof of such payments. The tenant could have printed and produced the e-mail receipts she would have received after making such a payment and she likewise could have submitted her banking statements.
22. I don't accept the tenant's claim that her smartphone is the only place where one could view the payments that she had made to the landlord. In any case, when I afforded the tenant the opportunity at the hearing to show me, on her smartphone, the payments she testified she had made on 01 August 2019, she corrected that testimony and stated that her last payment was made on 16 July 2019, aligning with the landlord's rent records.
23. I also found the tenant's testimony concerning the payments she had made in March 2019 confusing. According to the tenant, she had paid to the landlord \$1605.80 in rent for March 2019. When I pointed out to the tenant that the

monthly rent was set at \$1200.00, she claimed that she had paid the extra \$405.80 to cover off the arrears that had accumulated up to that point. But the landlord's records show that, for the period ending 28 February 2019, the tenant had a zero-balance. In any case, no evidence was presented by the tenant to corroborate her claim that she had made those payments.

24. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
25. I calculate the amount owing to be \$2849.55 (\$900.00 owing for the period ending 31 July 2019, \$1200.00 for August 2019 and \$749.55 for September 2019 (\$1200.00 per month x 12 months = \$14,400.00 per year ÷ 365 days = \$39.45 per day x 19 days = \$749.55)).

Decision

26. The landlords' claim for a payment of rent succeeds in the amount of \$2849.55.
27. The tenant shall pay a daily rate of rent in the amount of \$39.45, beginning 20 September 2019, and continuing to the date the landlord obtain vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

16. With his application, the landlord submitted a termination notice (████ #3) which he stated was delivered to the tenant at the rental unit on 04 August 2019.
17. The termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 15 August 2019.
18. The landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

19. The tenant acknowledged that she had received the termination notice.
20. She argued that it was unfair that she was being evicted as the landlord had not been living up to his responsibilities as outlined in the *Residential Tenancies Act, 2018*. She again pointed out that there was an infestation of insects at the rental unit and she complained that the landlord had gotten into a physical altercation with her son.

21. The tenant also stated that she is receiving social assistance and her subsidy has been recently halved because of the issues at the rental unit.

Analysis

22. 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.

23. According to the testimony and evidence submitted at the hearing, on 04 August 2019 the tenant was in rental arrears in the amount of \$2100.00 and had been in arrears since March 2019. The tenant has made no payments since the notice was issued and since that time rent for September 2019 has also come due.

24. The tenant had complained that the landlord had not been living up to his statutory obligations, but I pointed out to the tenant that even if she were correct about that allegation, that fact would not give her the right to breach her lease agreement by withholding her rent.

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

Decision

26. The landlords' claim for an order for vacant possession of the rented premises succeeds.

27. 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: Security Deposit

28. The tenant paid a security deposit of \$600.00 on 19 October 2018 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlords' claim has been successful, he shall retain the security deposit as outlined in this decision and order.

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 receipt for \$16.55 for the costs of serving the tenant with the application by registered mail. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

30. The landlord is entitled to the following:

- A payment of \$2286.10, determined as follows
 - a) Rent Owing\$2849.55
 - b) Hearing Expenses\$36.55
 - c) **LESS: Security Deposit(\$600.00)**
 - d) Total Owing to Landlords\$2286.10
- A payment of a daily rate of rent in the amount of \$39.45, beginning 20 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.

25 September 2019

Date

John R. Cook
Residential Tenancies Tribunal