

Residential Tenancies Tribunal

[REDACTED] Decision 19-724-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 15 October 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants and landlords, [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) participated in the hearing by teleconference. The respondent, [REDACTED], hereinafter referred to as "the tenant", participated and was in attendance in Mount Pearl. His co-respondents, [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]), were not in attendance.

Issues before the Tribunal

3. The landlords are seeking the following:
 - a. An order for a payment of rent in the amount of \$2625.00,
 - b. An order for a payment of late fees in the amount of \$75.00, 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 7, 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. [REDACTED] and [REDACTED] were not present or represented at the hearing and no telephone numbers were provided 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 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 affidavits stating that [REDACTED] was served by e-mail on 04 October 2019 and that [REDACTED] was served through Facebook Messenger on 03 October 2019. Copies of those notices were submitted with the application along with copies of the previous communications the landlords had had with [REDACTED] and [REDACTED] at those addresses. As [REDACTED] and [REDACTED] 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. [REDACTED] amended the application at the hearing and stated that the landlords were now seeking a payment of \$4150.00 in rent.

Issue 1: Rent - \$4150.00

Relevant Submissions

The Landlord's Position

8. The landlords submitted a rental agreement with their application ([REDACTED] #1) showing that they had entered into a 1-year, fixed-term lease with the tenant commencing 01 September 2019. The agreed rent is set at \$1500.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$750.00.
9. The tenant and [REDACTED] signed the rental agreement on 25 August 2018. A third signature, purportedly belonging to [REDACTED], was added in November 2018, but as the landlords live out of the province, they did not witness [REDACTED] signing the lease. They also pointed out that his signature is not dated.
10. In addition to the tenant, [REDACTED] and [REDACTED], [REDACTED] was also residing at the unit. According to the lease he was merely an occupant.
11. The landlords stated that they were informed in May 2019 that [REDACTED] had moved out of the unit and the tenant and [REDACTED] were subleasing his room in order to keep up with the rent payments.
12. With their application the landlords submitted rent records ([REDACTED] #2) showing the payments they had received since the tenancy began through to 02 September

2019. According to these records, the tenant last had a zero-balance in April 2019 and although they were continuing to make some payments to the landlords since that date, the arrears began to accumulate.

13. The rent records show that the last payment was made on 01 September 2019 in the amount of \$350.00 leaving a balance of \$2625.00 (the records show that the balance on that date is \$2700.00 if the late fees are added in—I deal with late fees in the next section).
14. The landlords stated that since those rent records were compiled, the tenant made an additional payment of \$50.00 around 07 or 08 September 2019 and since then, the rent for October 2019 has also come due.
15. Less the late fees, the landlords calculate that they are owed \$4075.00.

The Tenant's Position

16. The tenant stated that it was agreed when the tenancy began that [REDACTED] was to be a joint tenant with him and [REDACTED] and the reason he did not sign the agreement on 25 August 2018 was because the landlord's agent and [REDACTED] could not coordinate a time to meet. The tenant stated that [REDACTED] eventually signed the lease on 16 November 2018 and he witnessed him signing it.
17. The tenant stated that [REDACTED] moved out in February 2019 and since then he had been subleasing his room in order to cover the rent. He complained that the other people living in the rental unit were not pulling their weight when it came to the rent payments and he was left trying to come up with the full amount himself.
18. The tenant did not dispute the landlord's record of payments received since the tenancy began, but he did claim that he had an agreement with the landlords that they could keep the security deposit of \$750.00 and apply it towards the rent that was owing.
19. He also pointed out that he had an agreement with the landlords that he and [REDACTED] would vacate the unit on 31 August 2019 and he stated that [REDACTED] had moved by the middle of August 2019. He stated that he was the only person residing at the unit after 31 August 2019 and argued that as the lease had ended on that date he should only be charged rent on a per diem basis while he is in possession of the rental unit and at a rate equivalent to his share of the \$1500.00 the 3 tenants had been paying each month.
20. The tenant stated that the reason he had stayed on after 31 August 2019 was because he was left to clean the apartment himself and he found the amount of work he had to do to be overwhelming.

Analysis

21. I find it probable that [REDACTED] was supposed to be a third joint tenant on the lease and I accept the tenant's claim that he had eventually signed the agreement on 16 November 2019. Although [REDACTED] had moved out of the unit in February 2019 he nevertheless remained a joint tenant as no termination notice had been issued to the landlords and he did not seek their permission to assign his share in the lease.
22. There is no dispute that there was an agreement that this tenancy was supposed to end on 31 August 2019. However, the tenant continued to reside at the unit after that I therefore agree with the landlords that as he failed to turn the unit over to the landlords they are therefore entitled to charge rent at the same rate of \$1500.00 per month until they gain vacant possession of the rented premises.
23. I calculate the amount owing to be \$3314.80 (\$2575.00 for the period ending 30 September 2019 (\$2625.00 less the payment of \$50.00 made on 07/08 September 2019) and \$739.80 for October 2019 (\$1500.00 per month x 12 months = \$18,000.00 per year ÷ 365 days = \$49.32 per day x 15 days = \$739.80)).
24. I deal with the security deposit in section 4, below.

Decision

25. The landlords' claim for a payment of rent succeeds in the amount of \$3314.80.
26. The tenant shall pay a daily rate of rent in the amount of \$49.32, beginning 16 October 2019, and continuing to the date the landlords obtain vacant possession of the rented premises.

Issue 2: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

27. The landlords have assessed late fees in the amount of \$75.00.

Analysis

28. 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.

29. Regarding the late fees, the minister has prescribed the following:

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.

30. As the tenant has been in arrears since 02 May 2019, the landlords are entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

31. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

32. With their application, the landlords submitted 3 termination notices they had sent to the tenant in the summer of 2019 (█ #3, #4, #5). Each of these notice were issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent).

33. The final notice, Exhibit █ #5, is dated 01 September 2019 and █ stated that it was posted to the tenant's door on 02 September 2019 and he also stated that he had sent it to the tenant electronically on the following day. According to that notice, the tenant is required to vacate on 13 September 2019.

34. The tenant has not vacated as required and the landlords are seeking an order for vacant possession of the rented premises.

The Tenant's Position

35. The tenant acknowledged receiving this last termination notice though he complained that he did not see why the landlords had to post it to his door when all of their other communication was done electronically.
36. The tenant argued that the notice was not valid as it only lists him and [REDACTED] as tenants and he also questioned whether the signatures on the notice belong to the landlords.
37. The tenant also argued that as the landlords had not provided him with a copy of the lease he was under no obligation to pay rent and the landlords therefore cannot evict him on those grounds. He stated that he had signed the lease on 25 August 2018 but no copy of that lease was given to him at that time. He stated that he retrieved the agreement from the landlords' agent on 16 November 2018 so he could get a key for his mailbox but he gave that agreement back to her afterwards. He stated that [REDACTED] signed the agreement on that date and although he made a photocopy for himself, no copy was provided to him by the landlords or their agent.

Analysis

38. 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.

39. According to the testimony and evidence submitted at the hearing, on 02 September 2019, the day the notice was posted to the tenant's door, he had been in arrears since 02 May 2019. Since the notice was issued, the tenant has made 1 payment of \$50.00 and rent for October 2019 has also come due.

40. With respect to the tenant's claim that he had not received a copy of the rental agreement, section 7 of the *Residential Tenancies Act, 2018* states:

Provision of rental agreement and information

7. (1) At the time a landlord and tenant enter into a rental agreement, the landlord shall provide the tenant with a copy of this Act and the regulations, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(2) Where a landlord and tenant enter into a written rental agreement, the landlord shall provide the tenant with a copy of the signed rental agreement within 10 days after it is signed, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(3) Where a landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a written notice containing the information prescribed in the regulations within 10 days after entering into the rental agreement, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(4) Notwithstanding the terms of a rental agreement, where a landlord has not complied with subsection (2) or (3), the tenant's obligation to pay rent is suspended and the landlord shall not require the tenant to pay rent until the landlord complies with subsection (2) or (3).

41. However, I don't accept the tenant's claim that he had not received a copy of the rental agreement. On the agreement submitted at the hearing (■ #1), the tenant had indicated by his signature that he had received both a copy of the *Residential Tenancies Act* and a duplicate copy of the rental agreement. Furthermore, the tenant testified that he had made a copy of the agreement on 16 November 2019 and a copy of the agreement was attached to this application, which he received on 03 October 2019.

42. Regarding the signatures of the landlord, I accept their claim that they signed the notice and on inspection of the application, the signatures found there seem to match those that are on the notice.

43. It is true that ■ is not listed as a tenant on the termination notice, but I am of the view that this is a minor defect and does not render the notice invalid. The landlords were informed that ■ had moved out of the unit in February 2019 and the omission of his name from the notice would not have made the notice ambiguous and would not have caused the tenant any confusion.

44. As the notice meets the timeframe requirements set out in section 19 of the *Act* and as it was properly served, I find that the notice is valid.

Decision

45. The landlord's claim for an order for vacant possession of the rented premises succeeds.
46. The tenant 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

47. The tenant paid a security deposit of \$750.00 on 25 August 2018 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.

Summary of Decision

48. The landlords are entitled to the following:
 - A payment of \$3389.80, determined as follows
 - a) Rent Owing\$3314.80
 - b) Late Fees\$75.00
 - c) **LESS: Security Deposit.....(\$750.00)**
 - d) Total Owing to Landlord\$3389.80
 - A payment of a daily rate of rent in the amount of \$49.32, beginning 16 October 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 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.

18 October 2019

Date

John R. Cook
Residential Tenancies Tribunal