

Residential Tenancies Tribunal

[REDACTED] Decision 19-0746-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 22 October 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 respondent, [REDACTED], hereinafter referred to as “the tenant”, participated by teleconference.

Issues before the Tribunal

3. The landlords are seeking the following:
 - a. An order for a payment of rent in the amount of \$900.00;
 - b. An order for a payment of late fees in the amount of \$39.00;
 - c. An order for a payment of the balance of the security deposit in the amount of \$275.00.
 - d. 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 are sections 15 and 19 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent Owing - \$900.00

Relevant Submissions

The Landlords' Position

6. With their application the landlords had submitted a rental agreement (■ #1) showing that they had entered into a 6-month, fixed-term lease with the tenant commencing 01 August 2019. The rent is set at \$900.00 per month.
7. The landlords also submitted with their application a rent ledger (■ #2) showing the payments they had received from the tenant since she moved into the unit. These records show that the tenant paid rent for August 2019 but no rent was received for September 2019.
8. The landlords are seeking an order for a payment of rent for September 2019 in the amount of \$900.00.

The Tenant's Position

9. The tenant acknowledged that she owes rent for September 2019 and she testified that she vacated the unit on 01 October 2019.
10. The tenant complained that there is toxic mould growing at the rental unit and it had made her child sick. She stated that the unit ought to be condemned and she stated that she will be bringing her own action against the landlord.

Analysis

11. There was no dispute that the tenant owes rent for September 2019. As such, the landlord's claim succeeds.

Decision

12. The landlords' claim for a payment of rent succeeds in the amount of \$900.00.

Issue 2: Late fees - \$75.00

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

Analysis

14. Section 15.(1) 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.

15. The minister has set 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.*

Decision

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

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

17. Although the tenant had stated that she had moved out of the unit, the landlords are nevertheless seeking an order for vacant possession of the rented premises as the tenant still has some of her personal items left behind at the unit.

18. With their application, the landlords submitted a copy of a termination notice (█ #3) which they stated that they had sent to the tenant on 19 September 2019 by text-message. A copy of that text-message was also submitted at the hearing (█ #4).

19. The termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 30 September 2019.

The Tenant's Position

20. The tenant acknowledged that she had received the termination notice.

21. She reiterated her claim that she vacated on 01 October 2019 and she stated that she would make arrangements with the landlords to retrieve the remainder of her possessions.

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 19 September 2019 the tenant was in arrears in the amount of \$900.00 and had been in arrears since 02 September 2019. No payments have been made since.

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

Decision

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

26. 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

Relevant Submissions

27. According to the submitted rental agreement, the tenant had paid a security deposit of \$400.00.

28. Landlord2 pointed out that the lease required that the tenant was to pay a security deposit of \$675.00 and he is seeking an order for a payment of the remaining \$275.00.

Analysis

29. I accept landlord2's claim that the tenant had only paid \$400.00 of the required \$675.00 security deposit, leaving a balance of \$275.00.

30. However, given that the tenancy has come to an end and given that the security deposit will be disposed of through this decision to offset the rent that is owing, it would make no sense at this point to order the tenant to pay the remaining \$275.00 to the landlords and then also authorize them to apply it against the rent.

Decision

31. As the landlords' claim has been successful, they shall retain the \$400.00 security deposit that has been paid and apply it towards the rent that is owing.

Summary of Decision

32. The landlords are entitled to the following:

- A payment of \$575.00 determined as follows:
 - a) Rent Owing \$900.00
 - b) Late Fees \$75.00
 - c) **LESS: Security Deposit (\$400.00)**
 - d) Total \$575.00
- 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.

23 October 2019

Date

John R. Cook
Residential Tenancies Tribunal