

## Residential Tenancies Tribunal

[REDACTED] Decision 19-0771-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:20 pm on 20 November 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", did not participate.

### Issues before the Tribunal

3. The landlords are seeking the following:
  - a. An order for a payment of rent in the amount of \$1350.00;
  - b. An order for a payment of late fees in the amount of \$75.00;
  - c. An order for a payment of utilities in the amount of \$200.00;
  - d. An order for a payment of \$20 for hearing expenses; and
  - e. 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, 19 and 35 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

## Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone from the hearing room. 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 respondent's absence so long as he has been properly served. The landlords submitted an affidavit with their application stating that the tenant was personally served with notice of the hearing on 05 November 2019 and he has had 14 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.

### Issue 1: Rent Owing - \$1350.00

#### Relevant Submissions

##### The Landlords' Position

7. Landlord2 stated that she had entered into a monthly rental agreement with the tenant on 09 July 2019. The agreed rent was set at \$675.00 per month. No security deposit was paid.
8. Landlord2 stated that the tenant had only made 2 rent payments since the tenancy began: \$675.00 was paid on 09 July 2019, for July's rent, and \$675.00 was paid on 30 July 2019, for August's rent.
9. Landlord2 stated that they have received no rent for September, October or November 2019 and she is seeking an order for a payment of rent for those months.

#### Analysis

10. I accept landlord2's claim that the tenant has not paid rent for the month's of September, October and November 2019. As such, the landlords' claim succeeds in the amount of \$2025.00 (3 months x \$675.00 per month).

#### Decision

11. The landlords' claim for a payment of rent succeeds in the amount of \$2025.00.

## **Issue 2: Late fees - \$75.00**

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

### **Analysis**

13. 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.***

14. 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**

15. 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: Utilities - \$200.00**

16. Landlord2 stated that the tenant was required to have the utilities placed in his name when he moved into the rental unit. The tenant did initially set up an electricity account on 17 July 2019 but he closed that account on 11 October 2019 and the landlords have since been billed for the electricity used by the tenant since that date.
17. Landlord2 submitted into evidence her Newfoundland Power billing history (■ #1) and she pointed out that she was charged \$22.47 for the period from 11 October to 18 October 2019 and another \$159.51 for the period from 18 October to 19 November 2019.

## Analysis

18. I accept landlord2's claim that the tenant cancelled his electricity account on 11 October 2019.
19. The landlords' evidence shows that they were charged \$181.98 since that date (\$22.47 + \$159.51).

## Decision

20. The landlords' claim for a payment of utilities succeeds on the amount of \$181.98.

## Issue 4: Vacant Possession of the Rented Premises

### Relevant Submissions

#### The Landlords' Position

21. With their application, the landlords submitted a termination notice (■ #3) and landlord1 testified that it was sent to the tenant by text-message.
22. Landlord2 produced that text-message on her smart phone at the hearing showing that it was sent on 30 September 2019 at 6:43 pm. Landlord2 sent me a screenshot of that text-message by e-mail and I have included it in the file.
23. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 11 October 2019.
24. The tenant has not vacated as required and the landlords are seeking an order for vacant possession of the rented premises.

## Analysis

25. 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),**

*(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and*

- (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.*

*(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.*

*(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.*

*(4) In addition to the requirements under section 34, a notice under this section shall*

- (a) be signed by the landlord;
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and
- (c) be served in accordance with section 35.

26. The relevant subsections of s. 35 of the Act state:

#### **Service of documents**

**35. (1) A notice or other document under this Act other than an application under section 42 shall be served by a tenant on a landlord by**

...

- (f) sending it electronically where
  - (i) it is provided in the same or substantially the same form as the written notice or document,
  - (ii) the landlord has provided an electronic address to receive documents, and

*(iii) it is sent to that electronic address; or*

...

*(6) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.*

27. The termination notice sent to the tenant by text-message was sent on 30 September 2019 at 6:43 pm. According to s. 35.(6) of the *Act*, it is therefore considered to have been served on the following day, Tuesday, 01 October 2019.
28. But section 19.(1)(b) states that a notice under this section of the *Act* shall specify a termination date that is “not less than 10 days after the notice is served on the tenant”. As the phrase “not less than” is used here, these 10 days have to be “clear” days. That means that when counting those 10 days one does not count the day the notice is served or the date the tenant is required to vacate.
29. Bearing that in mind, on 01 October 2019, the earliest date the landlord could have specified as a termination date would have been 12 October 2019, not 11 October 2019 as found on the submitted notice.
30. For that reason, the termination notice issued to the tenant is not valid.

### **Decision**

31. The landlords’ claim for an order for vacant possession of the rented premises does not succeed

### **Issue 5: Hearing Expenses**

32. As the landlords’ claim has been partly successful, the tenant shall pay their hearing expense of \$20.00 for the costs of filing this application.

### **Summary of Decision**

33. The landlords are entitled to the following:
  - A payment of \$2301.98, determined as follows:

a) Rent Owing .....	\$2025.00
b) Late Fees .....	\$75.00
c) Utilities .....	\$181.98
d) Hearing Expenses.....	\$20.00
e) Total.....	<u>\$2301.98</u>

34. The landlords' claim for an order for vacant possession of the rented premises does not succeed.

22 November 2019

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Redacted]  
John R. Cook  
Residential Tenancies Tribunal