

Residential Tenancies Tribunal

Decision 19-0783-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 30 October 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", 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 \$1600.00; 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 the Residential Tenancies Act, 2000, sections 19 and 34 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 landlord submitted an affidavit at the hearing stating that the tenant was served with notice of the hearing 18 October 2019 and he has had 11 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

7. The landlord amended his application at the hearing and stated that he was seeking \$1350.00 in rent.

Issue 1: Rent Owing - \$1350.00

Relevant Submissions

8. The landlord stated that he had entered into a rental agreement with the tenant in April 2018. The agreed rent is set at \$700.00 and the landlord stated that the tenant had paid a security deposit of \$350.00.
9. The landlord testified that the tenant's rent was paid and up-to-date for the period ending 31 July 2019. In August 2019, however, he only received \$500.00, leaving a balance of \$200.00. No payment was made for September 2019 and he testified that he received \$250.00 on 23 October 2019.
10. The landlord calculates that the tenant owes him \$1350.00 (\$200.00 for August 2019, \$700.00 for September 2019 and \$450.00 for October 2019).

Analysis

11. I accept the landlord's claim that the tenant has not paid rent as required and I also accept his testimony concerning the payments he had received since August 2019.

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12. The landlord's claim for a payment of rent succeeds in the amount of \$1350.00.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

13. With his application, the landlord submitted a termination notice (█ #2).

16. This termination notice was in the form prescribed by the minister under the *Residential Tenancies Act, 2000* and the landlord indicates on this notice that he is terminating the rental agreement under section 18(1) of the Act.
17. The landlord stated that he personally delivered that notice to the tenant on 28 August 2019 and the notice states that the tenant must vacate the rented premises by 07 September 2019.
18. The landlord stated that the tenant has not vacated the rented premises and he is seeking an order for vacant possession of the rented premises.

Analysis

19. The landlord testified that he had issued the termination notice to the tenant as he was in rental arrears.
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),***
 - (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.

and section 34 states:

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

21. The *Residential Tenancies Act, 2000* was repealed on 01 January 2019 when the *Residential Tenancies Act, 2018* came into force. At that time, the minister prescribed new forms for terminating rental agreements. The form submitted with the landlord's application was prescribed under the repealed legislation.
22. The termination notice issued to the tenant is therefore not valid as it does not meet the notice requirements set out in section 34. It is not in the form prescribed by the minister under the *Residential Tenancies Act, 2018* and it misidentifies the section of the *Act* under which a notice for failure to pay rent can be issued. The landlord ought to have indicated that he was terminating the tenancy under section 19, not 18(1), of the *Act*.
23. Furthermore, 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. Bearing that in mind, on 28 August 2019, the earliest date the landlord could have specified as a termination date would have been 08 September 2019, not 07 September 2019 as found on the submitted notice.

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24. The termination notice issued to the tenant on 28 August 2019 is not a valid notice.
25. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 3: Hearing Expenses

26. As the landlord's claim has been partly successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

27. The landlord is entitled to a payment of \$1370.00, determined as follows:

a) Rent Owing	\$1350.00
b) Hearing Expenses.....	\$20.00
c) Total Owing to Landlord	<u>\$1370.00</u>

28. The landlord's claim for an order for vacant possession does not succeed.

31 October 2019

Date


John R. Cook
Residential Tenancies Tribunal