

Residential Tenancies Tribunal

[REDACTED] Decision 19-0785-05
[REDACTED]

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm 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 tenant", participated in the hearing. She was represented by [REDACTED] ([REDACTED]). [REDACTED]'s co-tenant, [REDACTED] ([REDACTED]), did not participate in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", also participated.

Issues before the Tribunal

4. The tenant is seeking a determination of the validity of a termination notice issued to her on 07 October 2019.
5. The landlord is seeking an order for vacant possession of the rented premises, a payment of rent in the amount of \$500.00, an order for a payment of late fees in the amount of \$40.00 and a payment of \$21.00 in compensation for inconvenience.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case are sections 10, 15, 18, 19, 20, 21, 34 and 45 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

8. [REDACTED] was not present or represented at the hearing. He sent notice to this Section on 28 October 2019 informing the Board that he would not be participating in the hearing. 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. With her application, the landlord submitted an affidavit stating that [REDACTED] had been served with notice of the hearing on 10 October 2019. As [REDACTED] was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
9. The landlord amended her application at the hearing and stated that she was now seeking the maximum late fee of \$75.00.

Issue 1: Validity of Termination Notice

Relevant Submissions

10. The landlord and tenant entered into a 1-year, fixed-term rental agreement commencing 15 April 2019 and a copy of the executed lease was submitted with the tenant's application ([REDACTED] #1). The agreed rent is set at \$1000.00 per month and the tenant had paid a security deposit of \$500.00.
11. With her application, the tenant submitted a copy of a termination notice ([REDACTED] #2) that was issued to her, by e-mail, on 07 October 2019.
12. The notice states that the landlord is terminating the agreement for 3 reasons: rent is overdue, the tenant has violated the lease agreement and the tenant had attempted to sublet the premises. No section of the *Residential Tenancies Act, 2018* is identified in the notice.
13. According to the notice, the tenant is required to vacate the premises in 24 hours.

Analysis

14. The *Residential Tenancies Act, 2018* outlines the notice requirements landlords are to abide by when they wish to terminate a rental agreement. Depending on the reason why the landlord is terminating the rental agreement, there are different timeframe requirements.

15. For instance, if the landlord wished to end the agreement for no reason, she is required to provide notice 3 months prior to the end of the lease (section 18 of the *Act*). If rent is overdue, the notice period is 10 days (section 19). If the tenant has committed a breach of the rental agreement, the notice period is 1 month (section 20).
16. The only circumstance in which a landlord could terminate a rental agreement on 24-hours notice would be if the tenant had made the rental unit unfit for habitation (section 21). No evidence was presented at the hearing to establish that the rental unit had been made unfit and for this reason, the landlord's notice is invalid.

Decision

17. The termination notice issued to the tenant on 07 October 2019 is invalid.

Issue 2: Rent

Relevant Submissions

The Landlord's Position

18. The landlord stated that she had only received \$500.00 for rent for October 2019 and she is seeking an order for the remaining \$500.00.

The Tenant's Position

19. The tenant stated that she had paid \$500.00 to the landlord in October 2019, representing her share of the rent for that month. She argued that [REDACTED] is liable for the remaining \$500.00 as he failed to pay any rent to the landlord for October 2019.
20. The tenant stated that [REDACTED] had moved out of the unit on 01 June 2019. Despite that fact, he continued to pay his share of the rent, \$500.00, for June, July, August and September 2019.
21. The tenant's representative, [REDACTED], pointed out that in s. 22 of the submitted lease, the tenant and landlord had agreed that the tenant would not assign or sublet the rented premises.
22. [REDACTED] stated that that agreement is contrary to the *Residential Tenancies Act, 2018* and he argued that had the tenant been allowed to sublet [REDACTED]'s room, she may have been able to find someone to move in and contribute to the rent.
23. The tenant stated that she had not sought the landlord's permission to sublet [REDACTED]'s room but she claimed that if she did find someone to sublet, she would have

notified the landlord. She claimed that she did seek a sublessee in July 2019 but she was unsuccessful.

Analysis

24. I accept the landlord's claim that she had only received \$500.00 in rent for October 2019 and that \$500.00 is outstanding.
25. Regarding the issue of subletting, statutory condition 3, set out in section 10 of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

3. Assigning or Subletting Residential Premises - The tenant may assign or sublet the residential premises subject to the written consent of the landlord, and the landlord shall not arbitrarily or unreasonably withhold consent and shall not levy a charge in excess of expenses actually incurred by the landlord in relation to giving consent.

26. █ argued that the tenant was not allowed to sublet the rented premises because of what the tenant and landlord had agreed to in the lease. But this section of the *Act* states that regardless of what agreements the tenant and the landlord had made, the tenant is, nevertheless, permitted to sublet the premises with the written consent of the landlord.
27. But no evidence was presented at the hearing to establish that the landlord had unreasonably withheld her consent. Furthermore, the tenant testified that she had not sought the landlord's permission to sublet the unit and she claimed that she did not find anyone to sublet the premises.

Decision

28. The landlord's claim for a payment of rent succeeds in the amount of \$500.00.

Issue 3: Late Fees - \$75.00

Relevant Submissions

The Landlords' Position

29. The landlord has assessed late fees in the amount of \$75.00.

Analysis

30. 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.

31. The minister has prescribed 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.

32. The tenant has been in rental arrears since 02 October 2019. I calculate that the landlord is entitled to a payment of late fees, to the date of the hearing, in the amount of \$61.00 (\$5.00 for 02 October 2019 and \$56.00 for the period from 03 October to 30 October 2019 (28 days x \$2.00 per day)).

Decision

33. The landlord's claim for late fees succeeds in the amount of \$61.00.

Issue 4: Vacant Possession of Rented Premises

Relevant Submissions

34. When the tenant filed her application on 07 October 2019 she had, at that point, only been served with one termination notice (█ #1).

35. Later that same day, on 07 October 2019, the landlord sent the tenant 2 other 10-day termination notices by, e-mail (█ #1, █ #2). According to these notices, the tenant is required to vacate the rental unit on 17 October 2019.

36. On 08 October 2019, the landlord filed her application with this Section seeking, among other things, an order for vacant possession of the rented premises. However, no termination notice was attached to that application.

37. On 09 October 2019, the landlord sent to the tenant, via e-mail, a 4th termination notice (█ #3). This final notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 20 October 2019.

Analysis

38. When the landlord filed her application on 08 October 2019 she failed to attach to her application any termination notice.

39. In any case, when the application was filed, the only termination notices that had been issued to the tenant at that point was the 24-hour notice discussed in the previous section and two other 10-day notices sent to her on 07 October 2019.

40. I've already determined in section 1, above, that the first, 24-hour notice is not valid. Regarding the two 10-day notices, these are also invalid.

41. Section 34 of the *Residential Tenancies Act, 2018* 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.***

42. These 2 notices do not state the section of the *Residential Tenancies Act, 2018* under which they are being issued, they are not in the form prescribed by the minister and they do not identify the tenant's address.

43. I'll also point out that they are not 10-day notices. Section 35 of the Act outlines how notices are to be served and subsection 35.(6) states:

Service of documents

35. (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.

44. On review of these 2 e-mail notices, I note that they were sent on 07 October 2019 at 4:57 pm (█ #1) and 9:06 pm (█ #2). Since they were both sent after

4:00 pm, they are considered to have been served on the following day, Tuesday, 08 October 2019. And as these notices state that the tenant is to vacate on 17 October 2018, these are to be regarded as 8-days notices as that is the number of clear days between the date of service and the date the tenant has to move out.

45. With respect to the 4th notice (█ #3), I find that the landlord cannot seek an order for possession based on that notice. Policy with this Section is that if a landlord is seeking an order for possession of rented premises, she may make application to this Section after the termination notice has been issued. A copy of that termination notice then becomes part of the application.
46. No termination notice was attached to the landlord's application, as I indicated above, and the landlord's application was filed a day before that 4th notice was issued. For that reason, the landlord's claim for an order for vacant possession does not succeed.
47. But even if the landlord had properly served the notice and then, afterwards, made proper application to this Section, her claim would still have failed.
48. Section 19 of the Act 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.

49. This termination notice, the 4th one (████ #3), was also sent by e-mail and it was sent around 4:40 pm. According to s. 35.(6) of the *Act*, it therefore is considered to have been served on Thursday, 10 October 2019.
50. As this section of the *Act* states that the notice must specify a termination date that is “not less than” 10 days after the notice is served, these 10 days are therefore “clear” days, meaning that when counting those days one does not count the day the notice is served or the day the tenant has to vacate.
51. But there are only 9 clear days between 10 October and 20 October 2019, the termination date specified in the notice. So even if I could have considered this notice, the landlord’s claim would have failed anyhow.

Decision

52. The landlord’s claim for an order for vacant possession of the rented premises does not succeed.

Issue 5: Compensation for Inconvenience - \$21.00

53. The landlord is seeking \$21.00 in compensation for missing an hour of work to attend this hearing.

Analysis

54. The costs associated with attending and preparing for a hearing are considered to be hearing expenses. Claimable hearing expenses include the costs of preparing documents for presentation at the hearing, the costs associated with serving the respondents with notice of the hearing, the costs of filing the application and the costs of subpoenaing witnesses.
55. Lost wages are not a claimable expense.

Decision

56. The landlord’s claim for compensation for inconvenience does not succeed.

Issue 6: Hearing Expenses

57. Both the tenant and the landlord submitted receipts at the hearing showing that they had each paid \$20.00 to file their respective claims. As both claims have been partly successful, the parties shall pay their own hearing expenses.

Summary of Decision

58. The termination notice issued to the tenant on 07 October 2019 is not a valid notice.
59. The landlord's claim for an order for vacant possession of the rented premises does not succeed.
60. The landlord is entitled to a payment of \$561.00, determined as follows:
 - a) Rent Owing\$500.00
 - b) Late Fees\$61.00
 - c) Total Owing to Landlord\$561.00

05 November 2019

Date

John R. Cook
Residential Tenancies Tribunal