

Residential Tenancies Tribunal

Decision 19-0810-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 12:50 pm on 14 November 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant and landlord, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “[REDACTED]”. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$4816.00; 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 are Sections 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The landlord amended her application at the hearing and stated that she was seeking \$4316.00 in rent.

Issue 1: Rent Owing - \$4316.00

Relevant Submissions

The Landlords' Position

7. [REDACTED] was hired by the landlord in August 2018 to manage the property at [REDACTED]
[REDACTED].
8. With her application [REDACTED] submitted a rental agreement showing that the landlord had entered into a 1-year lease with the tenant, commencing 01 November 2014. The agreed rent is set at \$1110.00.
9. [REDACTED] submitted rent records at the hearing which she stated were supplied to her by the landlord's accountant. [REDACTED] stated that although she was managing this property, she did not collect the rent and the rent was paid directly to the landlord. She testified that this rent was paid either in cash by the tenant or on her behalf by the Department of Advanced Education, Skills and Labour (AESL).
10. The rent records cover the period from January 2017 to November 2019.
11. In 2017, the records show that no rent was paid for July, August or October. Although the tenant paid an additional \$184.00 in November, she had a balance owing of \$3166.00 for 2017.
12. In 2018, the records show that the landlord received the required rent each month through to July, but in August 2017 the landlord only received \$799.64. In September the records show that the landlord received 4 separate payments totalling \$1449.97. No rent was paid in December leaving a balance owing of \$950.39.
13. [REDACTED] also stated that on 01 November 2018, the landlord ceased paying the electrical utilities and the electricity account was transferred into the tenant's name. In exchange for the tenant paying the costs of the utilities, the landlord reduced the rent to \$1000.00.
14. In 2019, the records show that all the rent has been paid except for \$200.00 owing from January 2019.
15. The landlord is seeking an order for a payment of \$4316.39 (\$3166.00 + \$950.39 + \$200.00).

The Tenant's Position

16. The tenant seemed confused by the presence of [REDACTED] at the hearing and she stated that [REDACTED] ("[REDACTED]"), the owner of the rental unit, was her landlord and all of her dealings regarding rent were with her.

17. The tenant stated that although the lease is dated November 2014, she testified that she moved into the rental unit in October 2006.
18. With respect to rent records submitted at the hearing, the tenant claimed that they were not accurate and she denied that she owed any rent for 2017 or 2018.
19. She reiterated that her rent was being paid on her behalf by AESL. She stated that there were times, however, when those payments were reduced or cut off because she had secured employment.
20. Regarding 2017, the tenant stated that [REDACTED] had contacted her in both July and August and informed her that AESL had only paid a portion of the rent. She stated that she informed [REDACTED] that she would pay the remainder and she recalled that she had paid approximately \$400.00 for July and \$600.00 for August. These payments were made in cash and no receipt was issued.
21. The tenant likewise stated that the same issue arose in August and September in 2018. She stated that [REDACTED] again contacted her in both of these months, by text-message, and informed her that the cheques from AESL did not cover the monthly rent. In both cases, the tenant stated that she invited the landlord to come to her apartment to collect the remaining rent.
22. In support of that claim, the tenant showed text-messages on her smart phone from August and September showing that she had received messages from [REDACTED] pointing out that the rent payments were short. In those exchanges, the tenant invites the landlord to her apartment to collect the remainder and the landlord states that she will go to the unit.
23. The tenant testified that she paid to the landlord the remaining rent for August and September 2018 to [REDACTED] in cash but no receipts were issued. She also claimed that rent for December 2018 was paid in full.
24. The tenant also stated that in November 2018 she stopped receiving assistance from the government and she started paying the full rent herself each month. She claimed that as [REDACTED] had not issued receipts to her in the past for the cash payments, she requested her bank account number and she stated that all payments made to JH after that time were done by direct deposit.
25. With respect to 2019, the tenant acknowledged that her rent for January 2019 was \$200.00 short. She claimed that she had withheld that \$200.00 as she did not have enough money during that month to pay both her rent and the electricity bill. She stated that the first electricity bill she had received was given to her by [REDACTED] in January 2019 and it covered the months of October, November and December 2018. The total charge on that bill was \$813.23 and a copy was submitted at the hearing.

Analysis

26. The tenant testified that she paid cash to [REDACTED] in 2017 and 2018 whenever rent payments were cut by AESL. Except for the tenant's testimony, there is no evidence of those payments—no receipts were issued to the tenant and those payments are not recorded in the landlord's rent records.
27. However, [REDACTED] was not a witness to those payments and the rent records submitted at the hearing were not compiled by her. Of the payments showing on the rent records, [REDACTED] did not know which ones were made by AESL and which were cash payments made by the tenant. [REDACTED] was also unaware that for the past year the tenant had been paying her rent by direct deposit.
28. [REDACTED] claimed that if the tenant had been making cash payments, receipts would have been issued to her, but she stated that the only records given to her by the accountant for the landlord were the rent records submitted at the hearing. No receipts were presented at the hearing and no cheque stubs from AESL.
29. The text-messages presented by the tenant at the hearing do seem to lend credence to her claim that in 2018 [REDACTED] had collected the rent that was outstanding. After receiving the payment of \$799.64 for August 2018, the landlord sent a message to the tenant stating that she still owed \$310.36. In response, on 04 September 2018 the tenant writes: “[REDACTED] can you come and get your money?” and [REDACTED] responds: “Yes I will come”.
30. After the payment of \$799.64, the records show that the next payment received by the landlord was for \$125.97 on 05 September 2019. On receipt of that payment, the landlord writes: “I have just received \$125.97 from AESL. This means that there is \$674.00 owing for September”
31. But if the monthly rent is \$1110.00, and if \$125.97 was all that the landlord had received for September 2018 by that point, the amount owed by the tenant would be \$984.03, not \$674.00. This leads me to think that additional money had been paid to the landlord prior to receipt of the \$125.97 by AESL, as the tenant had contended. But no payments are showing in the landlord's records.
32. Based on the lack of evidence submitted at the hearing by the landlord, I find that the landlord has failed to establish, on the balance of probabilities, that the tenant owed rent for 2017 and 2018, or, if she did, exactly how much is owing. The tenant's testimony and evidence leads me to think it is probable that the tenant had made cash payments to the landlord which were not recorded in the rent records and for which no receipts were issued.
33. The tenant did acknowledge, however, that she owes \$200.00 for January 2019. Although I accept the tenant's claim that she also had to pay an electricity bill of \$813.23 in January 2019 and although I accept her claim that it is a hardship to pay these bills, the evidence submitted by the landlord does show that she had given the tenant proper notice under the *Residential Tenancies Act, 2000*.

34. As the landlord is also seeking an order for vacant possession of the rented premises, I find that the tenant has a credit of \$339.68cr to the date of the hearing (\$200.00 owing for the period ending 31 October 2019 less the credit of \$539.68cr for November 2019 (\$1000.00 per month x 12 months = \$12,000.00 per year ÷ 365 days = \$32.88 per day x 14 days = \$460.32 less the payment of \$1000.00 received on 01 November 2019 = \$539.68cr)).

Decision

35. The tenant has a rent credit of \$339.68cr. That credit covers rent for the period ending 30 November 2019.

36. The tenant shall pay a daily rate of rent in the amount of \$32.88, beginning 01 December 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

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

Analysis

38. 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.

39. 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

40. As the tenant has been in arrears since 02 January 2019, the landlord is 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

41. With her application, the landlord submitted a copy of a termination notice (■ #3) which she stated had been placed in the tenant's mailbox on 09 August 2019.

42. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 August 2019.

43. The landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

44. The tenant acknowledged that she had received the notice.

Analysis

45. 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.

46. According to the landlord's rent records, on 09 August 2019 the tenant owed \$200.00 from January 2019 and she had also only paid \$500.00 in July 2019, leaving a balance of \$700.00. The records show that the tenant paid the remaining \$500.00 owing for July on 15 August 2019, but that still left her with a balance owing of \$200.00 on the expiration date set out in the notice.
47. As the notice meets the timeframe requirements set out in section 19 of the *Act* it is a valid notice.

Decision

48. The landlord's claim for an order for vacant possession of the rented premises succeeds.
49. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issues 4: Hearing Expenses

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

Summary of Decision

51. The landlord is entitled to the following:
 - An order for vacant possession of the rented premises,
 - The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.
 - A payment of a daily rate of rent in the amount of \$32.88, beginning 01 December 2019 and continuing to the date the landlord obtains possession of the rental unit.
52. The tenant has a rent credit of \$319.68cr (\$339.68cr - \$20.00 for hearing expense).

22 November 2019

Date

John R. Cook
Residential Tenancies Tribunal