

Residential Tenancies Tribunal

Decision 19-0864-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 09 May 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 \$1150.00;
 - b. An order for vacant possession of the rented premises; and
 - c. Authorization to retain the security deposit of \$500.00.

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 and 24 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 stating that she had served the tenant with notice of the hearing, by text-message, on 13 November 2019 and he has had 11 days to provide a response. A copy of that text-message was submitted at the hearing along with copies of other text-message conversations the landlord had had with the tenant using that cellular number. 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 the application at the hearing and stated that she was now seeking \$2108.33 in rent.

Issue 1: Rent Owing - \$2108.33

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 09 October 2019. The agreed monthly rent was set at \$1150.00 and was to be paid semi-monthly, in installments of \$575.00, on the 1st and 15th day of each month.
9. The tenant moved into the rental unit on 09 October 2019 and he paid a security deposit of \$500.00 on that date. The first rent payment was due on 15 October 2019.
10. The landlord submitted her rent records at the hearing (█ #1). She stated that the tenant has paid no rent since he moved into the unit.
11. She calculates that he owes \$2108.33 to the date of the hearing.

Analysis

12. I accept the landlord's claim that the tenant had not paid rent as required. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate the amount owing to be \$1520.25 (\$575.00 owing for October 2019 and \$945.25 owing for November 2019 (\$1150.00 per month x 12 months = \$13,800.00 per year ÷ 365 days = \$37.81 per day x 25 days = \$945.25)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$1520.25.

15. The tenant shall pay a daily rate of rent in the amount of \$37.81, beginning 26 November 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

16. The landlord submitted a copy of a termination notice at the hearing (█ #2) which she stated she had personally delivered to the tenant on 27 October 2019.
17. This termination notice was issued under sections 19 (notice where failure to pay rent) and 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy) of the *Residential Tenancies Act, 2018* and it had an effective termination date of 07 November 2019.
18. With respect to the issue of rent, the landlord reiterated her claim that the tenant had not paid her any rent since he moved into the rental unit.
19. With respect to the issue of peaceful enjoyment, the landlord recounted 2 different issues.
20. Firstly, the landlord stated that she had been receiving complaints about the tenant from another resident at the complex whose apartment is adjacent to the tenant's.
21. The landlord stated that according to that resident, the tenant had been very noisy while in his apartment such that it was disturbing his quiet and peaceful enjoyment. She stated that she was informed that the tenant can be heard shouting and yelling profanities in his apartment and she also stated that the tenant's pet dogs can be heard crying and it sounds as if the tenant is dragging these dogs around the apartment.
22. In support of her claim, the landlord played 2 videos at the hearing which were recorded by the resident who was complaining about the tenant. These videos were recorded during times when the tenant was causing disturbances at the complex.
23. Because of the amount of noise, this resident had to call the police on █ ██████ to deal with the tenant. The landlord testified that this resident has since moved out because of the issues he had been having with the tenant.
24. Secondly, the landlord also complained that she had received a notice from the ██████ (█ #3) informing her that they have received 2 complaints about furniture being on the front lawn of the rental unit. The landlord also submitted 2 photographs showing that furniture (█ #4, #5).

25. The notice the landlord had received indicates that if the furniture is not removed by 29 November 2019 an order will be placed against the property.
26. The landlord argued that as the tenant had been interfering with the peaceful enjoyment of other residents at the complex and as an order is potentially going to be placed against her, she was entitled to issue a termination notice under section 24 of the *Act*.
27. The tenant has not vacated as required and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

28. 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.

29. I accept the landlord's claim that the tenant has paid no rent since he moved into the unit and that he has been in arrears since 16 October 2019.
30. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is valid on those grounds.
31. Statutory condition 7.(a), set out in section 10.(1) 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:

...

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

and according to section 24 of this Act:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) 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.

32. I was not convinced, however, that the landlord was in a position to issue a notice under this section of the Act. The resident who complained about the tenant was not called as a witness at the hearing and I have to regard the landlord's testimony about what he reported to her as hearsay. Furthermore, I was unable to discern much noise from the video played at the hearing.
33. Regarding the notice from the [REDACTED] about the tenant's furniture, I would characterize that issue as a failure of the tenant to meet his obligation to keep the premises clean and not an issue of peaceful enjoyment. A termination notice under section 20 (notice where material term of agreement contravened) would be more appropriate here.

34. Nevertheless, as the notice is valid on one of the 2 cited grounds, it remains a good notice.

Decision

35. The landlord's claim for an order for vacant possession of the rented premises succeeds.

36. 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.

Issue 3: Security Deposit

37. The landlord stated that the tenant had paid a security deposit of \$500.00 on 09 October 2019. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Issue 4: Hearing Expenses

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

Summary of Decision

39. The landlord is entitled to the following:

- A payment of \$1040.25, determined as follows
 - a) Rent Owing\$1520.25
 - b) Hearing Expenses.....\$20.00
 - c) **LESS: Security Deposit.....(\$500.00)**
 - d) Total Owing to Landlord\$1040.25
- A payment of a daily rate of rent in the amount of \$37.81, beginning 26 November 2019 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,

- The tenant shall also 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.

28 November 2019

Date


John R. Cook
Residential Tenancies Tribunal