

Residential Tenancies Tribunal

[REDACTED] Decision 19-0894-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 03 December 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 \$1119.45; 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 section 19 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 her 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 she has been properly served. The landlord submitted an affidavit with his application stating that he had personally served the tenant with notice of the hearing on 20 November 2019 and she has had 12 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 her absence.

Issue 1: Rent Owing - \$1119.45

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a rental agreement with [REDACTED] in March 2019 and the tenant was living with [REDACTED] at that time.
8. In September 2019, the landlord was informed that [REDACTED] was moving out of the rental unit and the tenant took over as sole leaseholder. With his application, the landlord had submitted an executed copy of the rental agreement he had entered into with the tenant at that time ([REDACTED] #1)
9. According to that agreement, the rent is set at \$900.00 per month and the landlord stated that that rent was to be paid directly to him by the Department of Advanced Education, Skills and Labour (AESL) on the tenant's behalf.
10. The landlord submitted rent records at the hearing ([REDACTED] #2) showing the payments he had received since September 2019. The landlord stated that he received no rent from AESL for September 2019 and he had only received a partial payment of \$680.55 for November 2019. He stated that he had received the full rent from AESL for October and December 2019.
11. The landlord is seeking an order for a payment of the remaining \$1119.45 owing for September (\$900.00) and November 2019 (\$219.45).

Analysis

12. I accept the landlord's testimony and evidence in this matter and I find that the landlord had received no rent for September 2019 and he is owed \$219.45 for November 2019.
13. As the landlord is seeking an order for vacant possession of the rented premises, I find that he is entitled to payment of rent to the day of the hearing and a per diem thereafter.

14. I calculate the rent owing to be \$308.22 (\$1119.45 owing for the period ending 30 November 2019 (\$900.00 owing for September 2019 and \$219.45 owing for November 2019) less a credit of \$811.23cr for December 2019 (\$900.00 per month x 12 months = \$10,800.00 per year ÷ 365 days = \$25.59 per day x 3 days = \$88.77 less the payment of \$900.00 paid by AESL on 01 December 2019 = \$811.23cr)).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$308.22.
16. The tenant shall pay a daily rate of rent in the amount of \$25.59, beginning 04 December 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

17. The landlord stated that he had posted a termination notice to the door of the rental unit on 19 November 2019 and a copy of that notice was submitted with his application ([REDACTED] #3).
18. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 30 November 2019.
19. The landlord stated that the tenant has not vacated as required and he is seeking an order for vacant possession of the rented premises.

Analysis

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),

...

(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.

21. On 19 November 2019 when the notice was issued, the tenant was in arrears in the amount of \$1119.45 and had been in arrears since 02 September 2019. No payments were received by the landlord prior to 30 November 2019.
22. As the notice meets the timeframe requirements set out in section 19 of the *Act* and as it was properly served, it is a valid notice.

Decision

23. The landlord's claim for an order for vacant possession of the rented premises succeeds.
24. 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.

Summary of Decision

25. The landlord is entitled to the following:
 - A payment of rent in the amount of \$308.22,
 - A payment of a daily rate of rent in the amount of \$25.59, beginning 04 December 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.

03 December 2019

Date

John R. Cook
Residential Tenancies Tribunal