

Residential Tenancies Tribunal

[REDACTED] Decision 19-0931-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 16 January 2020 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 \$1100.00; 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 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 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 03 January 2020 and he 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 his absence.

7. This is the second application filed by the landlord concerning this tenancy. The first application (████████) was heard on 30 October 2019 and as a result of that hearing, the tenant was ordered to pay to the landlord \$1350.00 in rent for the period ending 31 October 2019.
8. The landlord amended his application at the hearing and stated that he was now seeking \$1800.00 in rent.

Issue 1: Rent Owing - \$1800.00

Relevant Submissions

9. 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.
10. Since the hearing which was held on 30 October 2019, the tenant has only made 1 rent payment to the landlord: \$300.00 received on the same day as the hearing. A copy of the INTERAC e-Transfer receipt was submitted at the hearing (████ #1).
11. That \$300.00 was applied towards the rent for November 2019, leaving a balance of \$400.00 for that month. The landlord is also seeking a payment of \$700.00 for each of December 2019 and January 2020 for a total claim \$1800.00.

Analysis

12. I accept the landlord's claim that the tenant has not paid rent as required. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he 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 \$1467.20 (\$1100.00 owing for the period ending 31 December 2019 and \$367.20 for January 2020 (\$700.00 per month x 12 months = \$8400.00 per year ÷ 366 days = \$22.95 per day x 16 days = \$367.20)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$1467.20.
15. The tenant shall pay a daily rate of rent in the amount of \$22.95, beginning 17 January 2020, 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. With his application the landlord submitted a copy of a termination notice (■ #3) which he stated he had served on the tenant on 06 December 2019.
17. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 December 2019.
18. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

19. 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.

20. According to the landlord's testimony, on 06 December 2019 the tenant was in arrears in the amount of \$2450.00 and had been in arrears since August 2019. No payments have been made since the termination notice was issued and since that time rent for January 2020 has also come due.

21. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

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

23. 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

24. The landlord stated that the tenant had paid a security deposit of \$350.00 at the beginning of the tenancy. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and order.

Issue 4: Hearing Expenses

25. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

26. The landlord is entitled to the following:

- A payment of \$1137.20, determined as follows:
 - a) Rent Owing\$1467.20
 - b) Hearing Expenses.....\$20.00
 - c) **LESS: Security Deposit.....(\$350.00)**
 - d) Total\$1137.20
- A payment of a daily rate of rent in the amount of \$22.95, beginning 17 January 2020 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.

31 January 2020

Date



John R. Cook
Residential Tenancies Tribunal