

Residential Tenancies Tribunal

[REDACTED] Decision 19-0965-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 28 January 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", 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 \$1513.05;
 - b. An order for a payment of late fees in the amount of \$75.00; and
 - c. 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 15, 19 and 42 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served.

7. The landlord submitted affidavits stating that she had sent the notice of the hearing to the tenants by registered mail on 03 January 2020 and she submitted copies of the tracking histories at the hearing. Those tracking histories show that notice cards were left for the tenants indicating that the notices were available for pick-up at the Post Office, but they were never collected by the tenants.
8. Section 42 of the *Residential Tenancies Act, 2018* states:

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

- (a) a question arising under this Act or the regulations;***
- (b) whether a provision of a rental agreement has been contravened; or***
- (c) whether a provision of this Act or the regulations has been contravened.***

(2) An application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister.

(3) The applicant shall serve the application submitted to the director under subsection (2) by

- (a) giving it personally to the other party;***
- (b) sending it to the other party by prepaid registered mail or prepaid express post at an address provided by the other party;***
- (c) sending it electronically where***
 - (i) it is provided in the same or substantially the same form as the written notice or document,***
 - (ii) the other party has provided an electronic address for receipt of documents, and***
 - (iii) it is sent to that electronic address; or***

(d) sending it to the other party by courier service at an address provided by the other party.

...

(6) For the purpose of this section, where a copy of the application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the copy of the application was prepaid and properly addressed and sent.

9. Although the tenants never did receive notices of the hearing, as they were sent by registered mail on 03 January 2020, they are considered to have been served on 08 January 2020. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
10. The landlord amended her claim and stated that she was now seeking a total of \$2403.05 in rental arrears.

Issue 1: Rent Owing - \$2403.05

Relevant Submissions

The Landlords' Position

11. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenants on 01 November 2019 and a copy of the executed lease was submitted with the landlord's application (█ #1). The agreed rent is set at \$865.00 per month and it is acknowledged in the agreement that the tenants had paid a security deposit of \$432.50.
12. The landlord submitted rent records at the hearing showing the payments she had received from the tenants since they had moved in (█ #2). According to these records, the landlord has received just 2 payments from the tenants: \$60.50 was paid on 25 October 2019 and \$638.95 was paid on 05 November 2019. The landlord stated that \$432.50 of the amount paid was used for the security deposit and the remaining \$266.95 was applied towards rent for November 2019.
13. The tenants did give the landlord 3 rent cheques, each for \$515.00, in November 2019, December 2019 and January 2020, but they were each returned to the landlord by her bank for the reason of not sufficient funds (NSF). The landlord has assessed a fee on \$25.00 for each of these returned cheques.
14. The landlord calculates that the tenants owe \$2403.05 in rent and NSF fees for the period ending 31 January 2019.

Analysis

15. I accept the landlord's evidence which shows that the tenants had only made 2 payments to the landlord, totalling \$699.45, and that \$432.50 of that amount was considered the security deposit.
16. As the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
17. I calculate the rent owing to the date of the hearing to be \$2257.13 (\$598.05 owing for November 2019 (\$865.00 less \$266.95), \$865.00 owing for December 2019 and \$794.08 for January 2020 (\$865.00 per month x 12 months = \$10380.00 per year ÷ 366 days = \$28.36 per day x 28 days = \$794.08)).
18. I address the issue of the NSF fees in the next section.

Decision

19. The landlord's claim for a payment of rent succeeds in the amount of \$2257.13.
20. The tenants shall pay a daily rate of rent in the amount of \$28.36, beginning 29 January 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

Issue 3: NSF Fees - \$75.00

Analysis

21. 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.

(2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

22. Regarding the late fees, the minister has prescribed the following:

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.*

23. The landlord's rent records show that the tenants have been in rental arrears since they moved into the unit in November 2019. I therefore find that she is entitled to a payment of the maximum late fee of \$75.00 set by the minister.

24. Her records also show that 3 cheques were returned to her by her bank for the reason of "non-sufficient funds" and the landlord testified that she was charged \$25.00 by her bank. I therefore find that she is also entitled to a payment of the \$75.00 included in her rent records.

Decision

25. The landlord's claim for late fees succeeds in the amount of \$75.00.

26. The landlord's claim for NSF fees succeeds in the amount of \$75.00.

Issue 4: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

27. With her application, the landlord submitted a copy of a termination notice (■ #3) which she stated was posted to the tenant's door on 08 November 2019.

28. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 25 November 2019.

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

Analysis

30. 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.

31. According to the landlord's rent records, on 08 November 2019 the tenants had only paid \$266.95 of the rent that was owing for that month. No further rent payments have been made and since then rent for December 2019 and January 2020 has come due.
32. 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

33. The landlord's claim for an order for vacant possession of the rented premises succeeds.
34. The tenants 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 5: Hearing Expenses

35. The landlord submitted a hearing expense claim form and receipts showing that she had paid \$24.77 to serve the tenants by registered mail and a receipt showing that she had paid \$20.00 to file this application.
36. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expenses.

Issue 6: Security Deposit

37. The landlord's records show that the tenants paid a security deposit of \$432.50 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Summary of Decision

38. The landlord is entitled to the following:

- A payment of \$2019.40, determined as follows
 - a) Rent Owing\$2257.13
 - b) Late Fees\$75.00
 - c) NSF Fees\$75.00
 - d) Hearing Expenses\$44.77
 - e) LESS: Security Deposit(\$432.50)
 - f) Total Owing to Landlord\$2019.40
- A payment of a daily rate of rent in the amount of \$28.36, beginning 29 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 tenants 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.

05 February 2020

Date

John R. Cook
Residential Tenancies Tribunal