

Residential Tenancies Tribunal

Decision 20-0008-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 2:15 pm on 10 February 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as tenant1 did not participate in the hearing.
4. The respondent, [REDACTED], hereafter referred to as tenant2 did not participate in the hearing.
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$975.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$730.00 collected on this tenancy. The landlord issued a termination notice dated 16 December 2019 for the intended termination date of 27 December 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
6. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

7. The landlord amended the application at the onset of the hearing to include rent that has come due since the application was filed for February 2020. The new rental amount owing is \$2925.00 up to and including 29 February 2020.
8. The tenants, [REDACTED] and [REDACTED], were not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, 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/she has been properly served*.

The affidavit submitted by the landlord shows that tenant1 was served with the notice of this hearing on the **28 January 2020** by serving the application for dispute resolution document to tenant1 via email:

[REDACTED] and providing verification that the email was sent to this address and the email was belonging to the tenant. Tenant1 has had **13 days** to provide a response.

The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **28 January 2020** by serving the application for dispute resolution document to tenant2 via email:

[REDACTED] and providing verification that the email was sent to this address and the email was belonging to the tenant. Tenant2 has had **13 days** to provide a response.

A phone call was placed to the tenant number on file [REDACTED] and no contact was made.

As the tenants were properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

9. The tenants' application ([REDACTED]) in this claim counterclaim situation was dismissed as the tenants applicants failed to appear to present the claim.

Issues before the Tribunal

10. The landlord is seeking the following:

- a) Vacant possession of the rented premises
- b) Payment of rent owing **\$2925.00**
- c) Payment of late fees **\$75.00**
- d) Hearing expenses

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are Sections 19, 34 and 35 of *the Act*; and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owing - \$2925.00

Relevant Submissions

Landlord Position

13. The landlord stated that he had entered into a written rental agreement with the tenants, commencing 01 January 2019. The agreed rent is set at \$975.00 per month and due on the 1st day of each month with a security deposit in the amount of \$730.00 collected on this tenancy on or about 01 January 2019. The landlord issued a termination notice (**Exhibit L # 1**) dated 16 December 2019 for the intended date of 27 December 2019 (Section 19). The landlord testified that he forwarded this document to his property manager who served the notice on the 17 December 2019. The landlord testified that rent was outstanding in the amount of \$2925.00 for the period ending 29 February 2020 and submitted no rental records to support this claim.

Analysis

14. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenants.
15. In addition to any evidence presented at the hearing by the landlord, a review of the file (████████) reveals that no rental records were submitted during the application phase of the adjudication process.

16. The landlord is seeking an order for the payment of rent in the amount of \$2925.00. The landlord has testified that rent is owed for December 2019, January 2020 and February 2020 in the amount of \$2925.00. The landlord has failed to provide any rent records to substantiate the amounts owed or any payments received by the tenants.
17. Records are an integral part of determining amounts owed and outstanding. The standard of record keeping does not have to be a complex accounting system printout. Records have been accepted as notations made on a calendar or an envelope and just about everything up to complex computer printouts. The landlord in this matter has provided no records.
18. The landlord is required on the balance of probabilities to support the claim being put forth with evidence. Failure to do this leaves this tribunal to make a finding in favor of the respondents. I find that the landlord has not supported the claim and as such the claim for rent owing fails.

Decision

19. The landlord's total claim for rent fails.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

20. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
21. The landlord testified that the tenants have been in arrears since December 2019. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

22. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
23. The landlord has failed to support the claim that the tenants owe rent. This failure then would also negate any claim for late fees if the claim for rent owed has not been supported.

Decision

24. The landlord's claim for late fees fails as there has been no determination that rent is actually owed.

Issue 3: Other - \$100.00

Landlord Position

25. The landlord is seeking payment of rents deducted without landlord authorization.
26. The landlord testified that the tenants made deductions from the amounts of rent owed for things that they claimed they did around the property. The landlord testified that they only paid \$900.00 in one month and \$950.00 in another. There was no indication which months were in question. Again, there was no records submitted for the months or payments in question.

Analysis

27. The landlord has failed to support the claim that the tenants deducted any amounts of rent. The landlord has again failed to supply any records to support the claim the tenants made unauthorized deductions. The landlord cannot simply rest on the testimony that this actually happened in the hopes of receiving a financial order of compensation. On the balance of probabilities and the totality of the evidence submitted, I am unable to establish that any deductions of rent were made by the tenants. As such, the landlord's claim fails.

Decision

28. The landlord's claim for unauthorized deductions fails.

Issue 4: Vacant Possession of the Rented Premises

Landlord Position

29. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
30. The landlord testified that the tenants have failed to pay rent as required by the rental agreement and has accumulated excessive rental arrears. The landlord submitted a copy of the termination notice (**Exhibit L # 1**) issued to the tenants and dated 16 December 2019 for the intended termination date of 27 December 2019 thereby terminating the tenancy effective 27 December 2019. On the termination date, the landlord claims the tenants were in arrears.

31. The landlord testified that the notice to terminate was served to the tenants on 17 December 2019 by personal service (to [REDACTED] personally). The landlord indicated that as of the hearing date (10 February 2020), the tenants remain in the unit.

Analysis

32. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 19(4) and 34 as well as the service requirements identified in section 35.

33. The issue of rental arrears has been established above. There was a finding in paragraph 18 that the tenants were not responsible for the arrears being claimed by the landlord.

34. The landlord served a termination notice (**Exhibit L # 1**) under section 19 of the *Residential Tenancies Act* by personal service to [REDACTED] on 17 December 2019. Section 19 requires that the landlord provide notice to the tenants that the rental agreement is terminated and the tenants are required to vacate the property on a specified date not less than 10 days after the notice has been served. I have made a finding that there were no arrears owed by the tenants as indicated in paragraph 18 above.

35. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 1**), I find the notice was served on 17 December 2019 as testified by the landlord at the hearing and the notice had a termination date of 27 December 2019. As established above, the tenants do not have an outstanding amount of rent beyond the date of termination.

36.

Section 19 (1)(b) and (4)

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.

(4) *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.*

Section 34

A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;***
- (b) contain the name and address of the recipient;***
- (c) identify the residential premises for which the notice is given; and***
- (d) state the section of this Act under which the notice is given.***

37. I further find that as the date of termination identified on the notice is less than 10 days after the notice has been served and the date the tenants are required to move out, the termination notice is not in full compliance with the requirements of section 19(1)(b) & (4). Sections 19 (1)(b) & (4) and 34 identify the technical requirements of the termination notice as identified above. On examination of the termination notice, I find that all these criteria have not been met.
38. As identified above, the landlord testified that he served the termination notice by personal service which is a permitted method of service identified under Section 35.
39. According to the reasons identified above, I find that the termination notice issued by the landlord to be not proper and invalid. Therefore, the landlord is not entitled to an order for vacant possession of the property.

Decision

40. The landlord's claim for vacant possession fails.

Issue 5: Hearing Expenses

Landlord Position

41. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 2**). The landlord is seeking this cost.

Analysis

42. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. However, the landlord's claim has not been successful and therefore, I find the tenants are not responsible to cover these expenses. The landlord shall cover his own hearing expenses.

Decision

43. The landlord shall cover his own hearing expenses.

Summary of Decision

44. The landlord's claim fails.

04 March 2020

Date



Michael Greene
Residential Tenancies Tribunal