

Residential Tenancies Tribunal

Decision 20-0011-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 06 February 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", was represented at the hearing by [REDACTED] ('[REDACTED]') and a letter of authorization is on file
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$2400.00,
 - b. An order for a payment of late fees,
 - c. An order for vacant possession of the rented premises, and
 - d. Authorization to retain the security deposit of \$900.00.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. 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. █ submitted an affidavit stating that she had personally served the tenant with notice of the hearing on 25 January 2020 and she has had 11 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.
8. █ amended the application at the hearing and stated that she was seeking an additional \$1200.00 in rent for a total claim of \$3600.00.

Issue 1: Rent Owing - \$3600.00

Relevant Submissions

9. █ stated that the landlord had entered into a 1-year, fixed-term rental agreement with the tenant on 01 January 2019 and a copy of the executed lease was submitted with the landlord's application (█ #1). The agreed rent was set at \$1200.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$900.00.
10. █ stated that rent was paid and up-to-date for the period ending 30 November 2019 but she testified that no rent has been paid since.
11. █ is seeking an order for a payment of rent for December 2019, January 2020 and February 2020 in the amount of \$3600.00.

Analysis

12. I accept █'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 \$2636.04 (\$2400.00 for the period ending 31 January 2020 and \$236.04 for February 2020 (\$1200.00 per month x 12 months = \$14,400.00 per year ÷ 366 days = \$39.34 per day x 6 days = \$236.04)).

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14. The landlord's claim for a payment of rent succeeds in the amount of \$2636.04.
15. The tenant shall pay a daily rate of rent in the amount of \$39.34, beginning 07 February 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

16. The landlord has assessed late fees.

Analysis

17. Section 15.(1) 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.

18. The minister has set the following fees:

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.*

Decision

19. As the tenant has been in arrears since 02 December 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

20. [REDACTED] submitted a copy of a termination notice at the hearing ([REDACTED] #3) which she stated she had sent to the tenant by e-mail on 15 December 2019. A copy of that e-mail was also submitted at the hearing ([REDACTED] #4).
21. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 December 2019.
22. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

23. 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.

24. According to [REDACTED]'s testimony, on 15 December 2019 the tenant was in arrears in the amount of \$1200.00 and had been in arrears since the beginning of that month. The tenant has made no payments to the landlord since the notice was issued and since then rent for January and February 2020 has also come due.
25. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

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26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. 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 4: Security Deposit

28. █ stated that the tenant had paid a security deposit of \$900.00 and according to the landlord's application that deposit was paid on 23 December 2018. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

Issue 5: Hearing Expenses

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

Summary of Decision

30. The landlord is entitled to the following:

- A payment of \$1831.04, determined as follows
 - a) Rent Owing\$2636.04
 - b) Late Fees\$75.00
 - c) Hearing Expenses\$20.00
 - d) **LESS: Security Deposit.....(\$900.00)**
 - e) Total Owing to Landlord\$1831.04
- A payment of a daily rate of rent in the amount of \$39.34, beginning 07 February 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.

10 February 2020

Date

John R. Cook
Residential Tenancies Tribunal