

Residential Tenancies Tribunal

Decision 20-0012-04

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 2:00 pm (Atlantic Time) on 29 April 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. (*Affirmed*)
3. The respondent, [REDACTED], hereafter referred to as the tenant did not participate in the hearing. (*Absent and Not Represented*)
4. The details of the claim were presented as a verbal rental agreement with rent set at \$1000.00 per month and due on the 1st of each month. It was stated that there was no security deposit collected on this tenancy. The landlord issued a termination notice dated 15 March 2020 for the intended termination date of 31 March 2020 under Section 19 of the *Residential Tenancies Act, 2018*.
5. 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

6. The tenant, [REDACTED], was 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 tenant was served with the notice of this hearing on the **14 April 2020** as per section 42(6) of the *Residential Tenancies Act, 2018*, by serving the application for dispute resolution document personally to the tenant at the rental unit address.

The tenant has had **15 days** to provide a response.

As the tenant was 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.

7. The landlord amended the claim at the hearing to increase the amount of rent being sought to \$4000.00 up to 30 April 2020 as a result of rent that has come due since the filing of the application.
8. The landlord further amended the application to increase the amount of late fees being sought to the maximum allowable under the regulations (\$75.00) of the *Residential Tenancies Act, 2018*.
9. The landlord further amended the application to reflect additional utilities that have come due since the filing of the application. The new amount being claimed is \$615.43.

Issues before the Tribunal

10. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$4000.00**
 - c) Payment of late fees **\$75.00**
 - d) Payment of Utilities **\$615.43**
 - e) 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 - \$4000.00

Relevant Submissions

Landlord Position

13. The landlord stated that he had entered into a verbal rental agreement with the tenant, commencing 01 November 2019. The landlord testified that the agreement was for the tenant to complete some work on the property for November and December 2019 and the landlord would cover the rent and utilities for that period. The landlord stated that the work was acceptable and rent was to commence 01 January 2020 at a rate of \$1000.00 per month with the utilities changed over to the tenant's name. There was no security deposit collected on the tenancy. The landlord testified that the tenant has not paid any rent and is in arrears in the amount of \$4000.00 up to 30 April 2020.
14. The landlord issued a termination notice (**Exhibit L # 6**) for the intended termination date of 31 March 2020. The landlord further submitted a rental statement showing rent outstanding (**Exhibit L # 1**). The landlord stated as of the hearing date 29 April 2020 rent remains outstanding and the tenant remains in the unit.

Analysis

15. 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 tenant.
16. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Records are clear that rent is owed in the amount of **\$3000.00** for the period ending 31 March 2020. Rent for April 2020 can only be awarded up to and including the hearing date (29 April 2020) and is calculated as $(\$1000.00 \times 12 \text{ months}) = \$12,000.00 \div 366 \text{ days} = \$32.79 \text{ per day} \times 29 \text{ days} = \950.91 . Rent for owing for April 1 - 29 then is **\$950.91**.

17. Respective of the rent for the remainder of the month of April 2020, the landlord is further awarded a daily rate of rent in the amount of **\$32.79** commencing **on 30 April 2020** and continuing until the day the landlord obtains vacant possession of the property.

Decision

18. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 31 March 2020 \$3000.00
 - b) Rent owing April 1 – 29, 2020 950.91
 - c) Total Arrears **\$3950.91**
 - d) The landlord is awarded a daily rate of rent in the amount of **\$32.79** beginning **on 30 April 2020** and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

19. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
20. The landlord testified that the tenant has been in arrears since 01 January 2020. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

21. Established by undisputed fact above, the tenant was in arrears since the month of January 2020. 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.
22. Any calculated amount of late fees would far exceed the maximum allowable under regulations and as such, the late fees owing are \$75.00.
23. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

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

Issue 3: Utilities - \$615.43

Relevant Submissions

Landlord Position

25. The landlord stated that the conditions of the rental was that the tenant would assume the costs of the electrical accounts beginning 01 January 2020 and failed to do so. The landlord testified that he has maintained the utilities for the property and submitted three invoices from NL Hydro (**Exhibit L # 3**) totaling \$615.43 covering the period 15 January 2020 to 15 April 2020.
26. The landlord further submitted a series of messages between the parties (**Exhibit L # 2**) where the tenant indicates he will switch over the electrical account.
27. The landlord testified that this cost should be the responsibility of the tenant and is claiming this charge for the utilities.

Analysis

28. 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 utilities that is being claimed by the landlord actually owed by the tenant.
29. With respect to the utilities being claimed, I agree with the landlord that this charge is the responsibility of the tenant. Utilities are required to be paid by the tenant for the period of use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Records are clear regarding the intentions of having the accounts switched into the tenant's name and the amounts charged by NL Hydro for the property. I find that based on the records provided, the tenant owes utilities in the amount of **\$615.43** covering the period up to 15 April 2020.

Decision

30. The landlord's claim for utilities succeeds in the amount of \$615.43.

Issue 4: Hearing Expenses

Landlord Position

31. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ([REDACTED]) (**Exhibit L # 4**). Additionally, the landlord is seeking the cost to travel to [REDACTED] to serve the Application for Dispute Resolution in the amount of \$119.74 (**Exhibit L # 5**). The landlord is seeking this cost.

Analysis

32. I have reviewed the testimony and evidence of the landlord in this matter. The expense incurred by the landlord for the application fee is 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*. The cost claimed to personally serve the Application for Dispute Resolution however does not conform to policy guidelines. Policy allows for a maximum of \$25.00 for the personal service of claim documents. This is the amount considered and will be awarded to the landlord accordingly. As such, I find the tenant is responsible to cover these reasonable expenses of the landlord in the amount of \$45.00.

Decision

33. The tenant shall pay the reasonable expenses of the landlord in the amount of \$45.00.

Issue 5: Vacant Possession of the Rented Premises

Landlord Position

34. The landlord is seeking to recover possession of the rented premises located at [REDACTED].

35. The landlord testified that the tenant is in rental arrears and indicated that a notice to terminate was issued under Section 19 of *the Act* (**Exhibit L # 6**) to terminate the tenancy on 31 March 2020. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 15 March 2020. The landlord indicated that as of the hearing date (29 April 2020), the tenant remained in the unit. The landlord further testified that to the best of his knowledge, there are 2 adults and 1 minor children (aged approximately 4 years old) living in the unit.

Analysis

36. 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.

37. The issue of non-payment of rent has been outlined and established by the testimony of the landlord along with documentary evidence presented by the landlord. I accept the evidence of the landlord and find that the tenant does owe rent as described in this decision above.

38. Section 19 (1)(b) requires that when a premises is rented for month to month and the tenant's rent is overdue for 5 days or more, the landlord may terminate the tenancy and the tenant is required to vacate the residential premises on a date not less than 10 days after the notice has been served. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 6**), I find the notice was served on 15 March 2020 with a termination date of 31 March 2020. As established above, the tenant owes rent which is in contravention of *The Act* and rental agreement between both parties. I further find that as the date of termination identified on the notice is at least 10 clear days between the date the notice was issued and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 19 (1).

39. Sections 19 (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find that all these criteria have been met.

section 19 (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.*

40. As identified above, the landlord testified that he served the termination notice personally which is a permitted method of service identified under section 35.

41. According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession of the property along with an order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

42. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

Summary of Decision

43. The landlord is entitled to the following:

- a) Rent Owing (up to and including 29 April 2020).....\$3950.91
- b) Late Fees.....75.00
- c) Payment of Utilities
- d) Hearing Expenses
- e) Total owing to Landlord**
\$4686.34

- f) An order of Vacant Possession

- g) A daily rate of rent in the amount of **\$32.79** beginning **30 April 2020**.

- h) An order for any and all costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

30 April 2020

Date

Michael Greene
Residential Tenancies Tribunal