

Residential Tenancies Tribunal

[REDACTED] Decision 20-0023-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 2:15 pm on **12 May 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 tenant1 did not participate in the hearing (*Absent and Not Represented*).
4. The respondent, [REDACTED], hereafter referred to as tenant2 did not participate in the hearing (*Absent and Not Represented*).
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$750.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$400.00 collected on this tenancy on 01 October 2018. The landlord issued a termination notice dated 08 March 2020 for the intended termination date of 21 March 2020 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 decrease rent that is being claimed to \$4450.00 as a result of payments made and rent that has come due since the filing of the application. The new rental amount owing is \$4450.00 up to and including 31 May 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 **01 May 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 **10 days** to provide a response.

The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **01 May 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 **10 days** to provide a response.

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.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$4450.00**
 - c) Utilities Owed **\$110.86**

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. 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 - \$4450.00

Relevant Submissions

Landlord Position

12. The landlord stated that he had entered into a written rental agreement with the tenants, commencing 01 October 2018. The agreed rent is set at \$750.00 per month and due on the 1st day of each month with a security deposit in the amount of \$400.00 collected on this tenancy on or about 01 October 2018. The landlord issued a termination notice (**Exhibit L # 1**) dated 08 March 2020 for the intended date of 21 March 2020 (Section 19). The landlord submitted rental records (**Exhibit L # 1**) to establish that rent was outstanding in the amount of \$4450.00 for the period ending 31 May 2020.

Analysis

13. 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.
14. The landlord is seeking an order for the payment of rent in the amount of \$4450.00. The landlord has testified that rent is owed for the period ending 30 April 2020 in the amount of **\$3810.86**.
15. Rent for the month of May 2020 can only be awarded up to and including the hearing day (12 May 2020) in the amount of \$295.08 calculated as (\$750.00 X 12 = \$9000.00 ÷ 366 days = \$24.59 per day X 12 days = \$295.08). The amount owing for May 1 – 12, 2020 is **\$295.08**.
16. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$24.59** beginning on **13 May 2020** and continuing until the day the landlord obtain vacant possession of the rented premises.

Decision

17. The landlord's total claim for rent succeeds as follows:

a. Rent owing up to 30 April 2020:	\$3810.86
b. Rent owing for May 1 – 12, 2020	<u>295.08</u>
c. Total Owing to the Landlord	<u>\$4105.94</u>
d. A daily rate beginning 13 May 2020	\$24.59

Issue 2: Payment of Utilities - \$110.86

Relevant Submissions

Landlord Position

18. The landlord stated that they had received an invoice from NL Power (**Exhibit L # 4**) in the amount of \$110.86. The landlord stated that the tenants failed to have the power changed into their names at the beginning of the tenancy and ran up the bill in the landlord's name. The landlord testified that this cost should be the responsibility of the tenants and is claiming this charge for the utilities.

Analysis

19. 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 tenants.

20. With respect to the utilities being claimed, I agree with the landlord that this charge is the responsibility of the tenants. Utilities are required to be paid by the tenants 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 that the tenants were required to pay their own utilities as stated in part 7 of the Rental Agreement (**Exhibit L # 2**). Failing to change the electrical account is contrary to the rental contract and I find that based on the records provided, the tenants owe utilities in the amount of **\$110.86** including forfeited discounts and interest charged by NL Power.

Decision

21. The landlord's claim for payment of utilities succeeds in the amount of \$110.86.

Issue 4: Vacant Possession of the Rented Premises

Landlord Position

22. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
23. 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 # 3**) issued to the tenants and dated 08 March 2020 for the intended termination date of 21 March 2020 thereby terminating the tenancy effective 21 March 2020. On the termination date, the landlord claims the tenants were in arrears.
24. The landlord testified that as of the hearing date (12 May 2020), the tenants remain in the unit with 2 adults and 3 children aged 11, 5 and 2 years approximately.

Analysis

25. 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.
26. The issue of rental arrears has been established above. A finding from the evidence above is that the tenants are responsible for arrears owed to the landlord as determined.
27. The landlord served a termination notice (**Exhibit L # 3**) under section 19 of the *Residential Tenancies Act* on 08 March 2020. 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. From the records above, the tenants were in arrears on the date of termination.
28. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the notice was served on 08 March 2020 as testified by the landlord at the hearing and the notice had a termination date of 21 March 2020 and the tenants were in arrears.

29. 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.

30. I further find that as the date of termination identified on the notice is not less than 10 days after the notice has been served and the date the tenants are required to move out, the termination notice is 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 been met.

31. 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 (2 adults and 3 children aged 11, 5 and 2 years approximately), 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

32. The landlord's claim for vacant possession succeeds. The landlord is further awarded cost associated with the enforcement of the Possession Order by the High Sheriff of NL. (2 Adults and 3 Children)

Summary of Decision

33. The landlord is entitled to the following:

a)	Rent Owing	\$4105.94
b)	Utilities	<u>110.86</u>
c)	Total Owing to the Landlord	\$4216.80
d)	Vacant Possession of the Rented Premises	
e)	A daily rate of rent set at \$24.59 beginning 13 May 2020 and continuing until the day the landlord obtains vacant possession of the Rented Premises.	
f)	Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order	

21 May 2020

Date


Michael Greene
Residential Tenancies Tribunal