

Residential Tenancies Tribunal

[REDACTED] Decision 20-0036-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 24 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", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", 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 \$1600.00, and
 - b. 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 is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and there was no telephone number available where she could be reached. 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. The landlord submitted an affidavit with his application stating that he had personally served the tenant with notice of the hearing on 11 February 2020 and she has had 12 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.

Issue 1: Rent Owing - \$1600.00

Relevant Submissions

7. The landlord stated that he had entered into a monthly rental agreement with the tenant approximately 10 years ago. The current rent is set at \$800.00 per month and the landlord stated that the tenant had paid a security deposit of \$400.00 when she moved in.
8. The tenant's rent is paid on her behalf by the Department of Advanced Education, Skills and Labour (AESL). The landlord stated that he last received rent from AESL in December 2019 and he submitted a copy of the cheque stub at the hearing (████ #1).
9. The landlord stated that he has received no rent for January or February 2020 and he is seeking an order for a payment of \$1600.00 for those 2 months.

Analysis

10. I accept the landlord'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 he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
11. I calculate the amount owing to be \$1429.52 (\$800.00 for January 2020 and \$629.52 for February 2020 (\$800.00 per month x 12 months = \$9600.00 ÷ 366 days = \$26.23 per day x 24 days = \$629.52)).

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$1429.52.
13. The tenant shall pay a daily rate of rent in the amount of \$26.23, beginning 25 February 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

14. With his application, the landlord submitted a copy of a termination notice (■ #2) which he stated he had served on the tenant on 27 January 2020.
15. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 07 February 2020.
16. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

17. 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.

18. According to the landlord's testimony, on 27 January 2020 the tenant was in arrears in the amount of \$800.00 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 February 2020 has also come due.
19. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

20. The landlord's claim for an order for vacant possession of the rented premises succeeds.

21. 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

22. The landlord stated that the tenant had paid a security deposit of \$400.00 when she moved into the unit 10 years ago. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Summary of Decision

23. The landlord is entitled to the following:

- A payment of \$1029.52, determined as follows
 - a) Rent Owing\$1429.52
 - b) LESS: Security Deposit..... (\$400.00)
 - c) Total Owing to Landlord\$1029.52
- A payment of a daily rate of rent in the amount of \$26.23, beginning 25 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.

04 March 2020

Date

John R. Cook
Residential Tenancies Tribunal