

Residential Tenancies Tribunal

[REDACTED] Decision 20-0067-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 25 February 2020 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$550.00,
 - b. Authorization to retain the security deposit of \$275.00, and
 - c. 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*.

Issue 1: Rent Owing - \$550.00

Relevant Submissions

The Landlord's Position

6. The landlord and tenant entered into a 6-month, fixed-term rental agreement on 07 January 2020 and they both submitted their copies of the lease (█ #1, █ #1). The agreed rent was set at \$550.00 per month and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$275.00.
7. The landlord submitted his rent records at the hearing (█ #3) as well as copies of the receipts he had issued to the tenant (█ #2). These records show that the tenant had paid a security deposit of \$275.00 as well as a pro-rated rent of \$403.00 for January 2020.
8. The landlord stated that no rent was paid for February 2020 and he is seeking an order for a payment of \$550.00 for that month.

The Tenant's Position

9. The tenant acknowledged that she has not paid her rent for February 2020.
10. She claimed that there were maintenance issues at the rental unit that the landlord had refused to address and she intends to file an application with this Section seeking to have her rent paid in trust to the Director until such time as the repairs are completed.

Analysis

11. It is not disputed that the tenant had not paid rent for February 2020.
12. Policy with this Section is that a tenant cannot unilaterally withhold rent from a landlord in retaliation for his failure to carry out repairs. Rather, a tenant must first serve the landlord with a formal request to carry out repairs, and if he fails to comply with that request, a tenant may make application to this Section seeking permission from the Director to have the rent paid in trust until the repairs are carried out.
13. To the date of the hearing, the tenant had not filed such an application. As such, the landlord's claim for a payment of rent succeeds.
14. 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.
15. I calculate the amount owing to be \$450.75 (\$550.00 per month x 12 months = \$6600.00 per year ÷ 366 days = \$18.03 per day x 25 days = \$450.75).

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$450.75.

17. The tenant shall pay a daily rate of rent in the amount of \$18.03, beginning 26 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

The Landlord's Position

18. With his application, the landlord submitted a copy of a termination notice (■ #4) which he stated he had placed in the tenant's door on 08 February 2020.
19. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 19 February 2020.
20. The landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

21. The tenant acknowledged receiving the termination notice, but she did not recall on what day it was given to her.
22. The tenant requested that I withhold issuing an order for possession of the property until after the hearing of the application she intended to file with this Section.

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 the landlord's testimony and records, on 08 February 2020 the tenant was in arrears in the amount of \$550.00 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.
25. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

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. It was not disputed that the tenant had paid a security deposit of \$275.00 and receipt of that deposit was acknowledged in the submitted leases. As the landlord's claim has been successful, he shall retain the security deposit as outlined in this decision and order.

Issue 5: Hearing Expense

29. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenant shall pay that hearing expense.

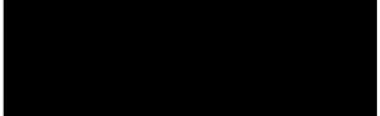
Summary of Decision

30. The landlord is entitled to the following:
 - A payment of \$195.75, determined as follows
 - a) Rent Owing\$450.75
 - b) Hearing Expense.....\$20.00
 - c) **LESS: Security Deposit.....(\$275.00)**
 - d) Total Owing to Landlord\$195.75

- A payment of a daily rate of rent in the amount of \$18.03, beginning 26 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.

06 March 2020

Date


John R. Cook
Residential Tenancies Tribunal