

Residential Tenancies Tribunal

Decision 20-0081-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 03 March 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".
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", 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 \$1620.00,
 - b. An order for a payment of late fees in the amount of \$75.00, and
 - c. An order for vacant possession of the rented premises.

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 tenants were not present or represented at the hearing and I was unable to reach them 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served.

8. The landlord submitted affidavits stating that she had sent the notice of the hearing to the tenants by registered mail on 12 February 2020 and she submitted copies of the tracking histories at the hearing. Those tracking histories show that notice cards were left for the tenants indicating that the notices were available for pick-up at the Post Office, but they were never collected by the tenants.
9. Section 42 of the *Residential Tenancies Act, 2018* states:

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

- (a) a question arising under this Act or the regulations;***
- (b) whether a provision of a rental agreement has been contravened; or***
- (c) whether a provision of this Act or the regulations has been contravened.***

(2) An application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister.

(3) The applicant shall serve the application submitted to the director under subsection (2) by

- (a) giving it personally to the other party;***
- (b) sending it to the other party by prepaid registered mail or prepaid express post at an address provided by the other party;***
- (c) sending it electronically where***
 - (i) it is provided in the same or substantially the same form as the written notice or document,***
 - (ii) the other party has provided an electronic address for receipt of documents, and***
 - (iii) it is sent to that electronic address; or***

(d) sending it to the other party by courier service at an address provided by the other party.

...

(6) For the purpose of this section, where a copy of the application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the copy of the application was prepaid and properly addressed and sent.

10. Although the tenants never did receive notices of the hearing, as they were sent by registered mail on 12 February 2020, they are considered to have been served on 17 February 2020. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
11. The landlord amended her application at the hearing and stated that she was now seeking rent in the amount of \$2430.00.

Issue 1: Rent Owing - \$2430.00

Relevant Submissions

12. The landlord entered into a 1-year, fixed-term rental agreement with the tenants, commencing 01 August 2019, and a copy of that executed lease was submitted with her application (█ #2). The agreed rent was set at \$810.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$405.00.
13. The landlord submitted rent records at the hearing (█ #1) showing the payments she had received from the tenants since they had moved into the rented premises. According to these records, the tenants had a zero-balance at the end of November 2019 but they then fell into rental arrears on 02 December 2019.
14. In December 2019 and January 2020 the tenants only paid half of the rent for each of those months, \$405.00, and no payments have been made for February or March 2020.
15. According to the landlord's rent records, the tenants currently owe \$2430.00 for the period ending 31 March 2020.

Analysis

16. I accept the landlord's claim that the tenants 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.

17. I calculate the amount owing to be \$1699.68 (\$405.00 owing for December 2019, \$405.00 owing for January 2020, \$810.00 owing for January 2020 and \$79.68 owing for March 2020 (\$810.00 per month x 12 months = \$9720.00 per year ÷ 366 days = \$26.56 per day x 3 days = \$79.68)).

Decision

18. The landlord's claim for a payment of rent succeeds in the amount of \$1699.68.
19. The tenants shall pay a daily rate of rent in the amount of \$26.56, beginning 04 March 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees

Relevant Submissions

20. The landlord has assessed late fees in the amount of \$75.00.

Analysis

21. Section 15.1(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.

22. 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.

23. As the tenants have 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.

Decision

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

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

25. The landlord submitted a copy of a termination notice at the hearing (█ #4) which she stated was posted on the tenants' door on 12 December 2019.

26. This termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 24 December 2019.

27. The landlord stated that the tenants have not vacated the rented premises as required and she is seeking an order for vacant possession.

Analysis

28. 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.

29. According to the landlord's rent records, on 12 December 2019 the tenants were in arrears in the amount of \$810.00 and had been in arrears since the beginning of that month. No payments were made by the tenants prior to the effective termination date set out in that notice.

30. As the tenants had not paid off the arrears prior to 24 December 2019 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

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

33. The landlord stated that the tenants had paid a security deposit of \$405.00 on 10 June 2019 and receipt of that deposit is acknowledged in the submitted lease. 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

34. The landlord submitted a hearing expense claim form and receipts showing that she had paid a fee of \$20.00 to file this application and had paid \$22.10 to send the notice of the hearing to the tenants by registered mail. As the landlord's claim has been successful, the tenants shall pay these hearing expenses.

Summary of Decision

35. The landlord is entitled to the following:
 - A payment of \$1411.78, determined as follows
 - a) Rent Owing\$1699.68
 - b) Late Fees\$75.00
 - c) Hearing Expenses\$42.10
 - d) **LESS: Security Deposit.....(\$405.00)**
 - e) Total Owing to Landlord\$1411.78
 - A payment of a daily rate of rent in the amount of \$26.56, beginning 04 March 2020 and continuing to the date the landlord obtains possession of the rental unit,

- An order for vacant possession of the rented premises,
- The tenants 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 2019

Date

John R. Cook
Residential Tenancies Tribunal

