

Residential Tenancies Tribunal

[REDACTED] Decision 20-0145-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:00 am 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.
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 verbal monthly rental agreement with rent set at \$750.00 per month and due on the 21st of each month. There was no security deposit collected on the tenancy. The landlord issued a termination notice dated 03 March 2020 for the intended termination date of 14 March 2020 under Section 19 and 24 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 tenants, [REDACTED] & [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 tenants were 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 by Xpress Post ([REDACTED]) to the tenants at the rental unit address.

The tenants have had **15 days** to provide a response.

A phone call was placed to the tenants' phone number [REDACTED]. There was no answer at this number and a message was left.

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.

8. The landlord amended the claim at the onset to increase the amount of rent being claimed to \$3000.00 reflecting rent that has come due since the filing of the claim.
9. There were no hearing expenses claimed by the applicant in this matter.
10. The landlord opted not to lead any evidence concerning section 24 of the *Residential Tenancies Act, 2018*.

Issues before the Tribunal

11. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$3000.00**

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. 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 - \$3000.00

Relevant Submissions

Landlord Position

14. The landlord stated that the parties entered into a verbal rental agreement with the tenants, commencing February 2015 approximately. The agreed rent was set at \$750.00 per month and due on the 21st day of each month with no security deposit collected on the tenancy. The landlord issued a termination notice (**Exhibit L # 1**) on 03 March 2020 for the intended termination date of 14 March 2020. The landlord further submitted into evidence a copy of the rental records (**Exhibit L # 2**) to establish an amount owing. The landlord testified that as of the hearing date, rent was outstanding and the tenants remained 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 tenants.
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 tenants 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 owing up to and including 20 April 2020 in the amount of **\$2250.00**. Rent for the period of 21 April – 20 May 2020 can only be awarded up to and including the hearing date (29 April 2020) and on a daily rate of rent beyond the hearing date calculated as ($\$750.00 \times 12 \text{ months} = \$9000.00 \div 365 \text{ days} = \$24.66 \text{ per day} \times 9 \text{ days} = \221.94). Rent for April 21-29, 2020 then is **\$221.94**.
17. Respective of the rent for the remainder of the month of April/May 2020, the landlord is further awarded a daily rate of rent in the amount of \$24.66 commencing on 30 April 2020 and continuing until the day the landlord obtain vacant possession of the property.

Decision

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

- a) Rent owing up to 20 April 2020 \$2250.00
- b) Rent owing for April 21 – 29, 2020 221.94
- c) Total Arrears **\$2471.94**
- d) The landlord is awarded a daily rate of rent in the amount of **\$24.66** beginning on 30 April 2020 and continuing until the day the landlord obtain vacant possession of the property.

Issue 2: Vacant Possession of the Rented Premises

Landlord Position

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

20. The landlord testified that the tenants are in rental arrears and indicated that a notice to terminate was issued under Section 19 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 14 March 2020. The landlord testified that the notice to terminate was served personally by the landlord to the tenants on 03 March 2020. The landlord indicated that as of the hearing date (29 April 2020), the tenants remained in the unit. The landlord further testified that to the best of his knowledge, there are 2 adults and 1 child aged 15 years approximately living in the unit.

Analysis

21. 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.

22. 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 tenants do owe rent as described in this decision above.

23. Section 19 (1)(b) requires that when a premises is rented for month to month and the tenants' rent is overdue for 5 days or more, the landlord may terminate the tenancy and the tenants are 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 # 1**), I find the notice was served on 03 March 2020 with a termination date of 14 March 2020. As established above, the tenants owe 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 tenants are required to move out, the termination notice is in full compliance with the requirements of section 19 (1).

24. Sections 19 (4) and 34 identify the technical requirements of the termination notice as identified below. On examination of the termination notice, I find it 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.*

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

26. According to the reasons identified above, I find that the termination notice issued by the landlords 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

27. 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

28. The landlord is entitled to the following:

- a) Rent Owing (up to and including 29 April 2020).....\$2471.94
- b) **Total owing to Landlord****\$2471.94**
- c) **Vacant Possession of the Rented Premises**
- d) **A daily rate of rent in the amount of \$24.66 beginning 30 April 2020.**
- g) **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