

Residential Tenancies Tribunal

Decision 20-0382-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:33 am on 02 October 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.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated. His co-respondent, [REDACTED] ("[REDACTED]"), was not in attendance.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$650.00,
 - 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 landlord amended the application at the hearing and stated that she was now seeking a total payment of rent in the amount of \$3250.00.

Issue 1: Rent Owing - \$3250.00

Relevant Submissions

The Landlord's Position

8. The landlord and tenant had entered into a 1-year, fixed-term rental agreement, commencing 07 July 2019, and a copy of that lease was submitted with the landlord's application. The agreed rent was set at \$1300.00 per month and it is also acknowledged in the lease that the tenant had paid a security deposit of \$800.00.
9. The landlord stated that on 12 August 2020 █ moved out of the rented premises and she returned her keys to the landlord on 20 August 2020.
10. The landlord submitted rent records with her application and she pointed out that she had only received a payment of \$650.00 for August 2020, and no rent was paid for the months of September or October 2020.
11. The landlord is seeking an order for a payment of rent in the amount of \$3250.00 (\$650.00 + \$1300.00 + 1300.00).

The Tenant's Position

12. The tenant acknowledged that no rent had been paid for September and October 2020.
13. Regarding rent for August 2020, the tenant stated that he was not aware that the full rent had not been paid for that month. He testified that he is in the process of going through a separation with █ and he claimed that she was the one who had been dealing with the rent payments. He claimed that the first he had heard that rent was late for August 2020 was when he was served with notice of this hearing in September 2020.

Analysis

14. The tenant did not contest the landlord's claim for rent for September and October 2020. Therefore, her claim for rent for those 2 month's succeeds. I also accept the landlord's testimony and evidence concerning the rent for August 2020 and I find that the tenant also owes the remaining \$650.00 for that month.
15. However, as the landlord is also seeking an order for 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.

16. I calculate the rent owing to be \$2035.24 (\$1950.00 for the rental period ending 30 September 2020 (\$650.00 + 1300.00) and \$85.24 for October 2020 (\$1300.00 per month x 12 months = \$15,600.00 per year ÷ 366 days = \$42.62 per day x 2 days = \$85.24)).

Decision

17. The landlord's claim for a payment of rent succeeds in the amount of \$2035.24.
18. The tenant shall pay a daily rate of rent in the amount of \$42.62, beginning 03 October 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$150.00

Relevant Submissions

19. The landlord has assessed late fees in the amount of \$150.00.

Analysis

20. Section 15.1 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.

21. 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.

22. As the tenant has been in arrears since 02 August 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlord's Position

24. With her application, the landlord had submitted a copy of termination notice which she stated she had served on the tenant on 16 August 2020. The landlord stated that she had sent that termination notice to the tenant by text-message, she had sent it by e-mail to [REDACTED], she had affixed it to the door of the rental unit and she had also placed a copy in the mailbox.
25. That termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 29 August 2020.
26. The tenant has not complied with that notice and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

27. The tenant stated that he had not received any text-message from the landlord indicating that she was terminating the rental agreement. He stated that his cellular number had changed in June 2020 and it may have been the case that the landlord had sent the notice to the telephone number he had been using previously.

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. I accept the landlord's claim that she had sent the termination notice to the tenant on 16 August 2020 to a telephone number that she had been previously using to communicate with him. Although the tenant stated at the hearing that his telephone number had changed in June 2020, he conceded that he had not informed the landlord of that change. I am of the view, then, that his not receiving the notice by text-message is not fault of the landlord. In any case, I accept the landlord's claim that she had sent the notice to [REDACTED] by e-mail and had delivered it to the rental unit.
30. According to the landlord's records and testimony, on 16 August 2020, the tenant was in arrears in the amount of \$650.00 and had been in arrears since the beginning of August 2020. The tenant has made no payments to the landlord since the notice was issued and since then rent for September and October 2020 has also come due.
31. As the termination notice meets the timeframe requirements set out in section 19 of the Act and as it was properly served, it is a valid notice.

Decision

32. The landlord's claim for an order for vacant possession of the rented premises succeeds.
33. 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

34. It is acknowledged in the submitted lease that the tenant had paid a security deposit of \$800.00. 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

35. The landlord submitted a receipt for \$20.00 for the costs of filing this application and a receipt for \$13.44 for the costs of serving the tenant with notice of the hearing by registered mail. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

36. The landlord is entitled to the following:

- A payment of \$1343.68, determined as follows
 - a) Rent Owing\$2035.24
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$33.44
 - d) LESS: Security Deposit.....(\$800.00)
 - e) Total Owing to Landlord\$1343.68
- A payment of a daily rate of rent in the amount of \$42.62, beginning 03 October 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.

05 October 2020

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal