

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0026-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:45 pm on 16 February 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing and was represented by [REDACTED] – Relative. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
4. In a proceeding under the *Residential Tenancies Act*, 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

5. The application was AMENDED at the hearing to add rent that has come due since the filing of the application. The new amount outstanding is **\$1000.00**.
6. The tenant, [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 affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **22 January 2021** by serving the original documents to the tenant by email: [REDACTED] and supplying a copy of the email sent along with verification the email was provided by the tenant in the rental agreement.

A phone call was placed to the tenant at [REDACTED] with no answer.

7. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$1000.00**;
 - b) Return of Possessions **\$229.99**
 - c) Vacant possession of the rented premises;
 - d) Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. 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 - \$1000.00

Relevant Submissions

Landlord Position

11. The landlord stated that he had entered into a monthly rental agreement with the tenant with rent set at \$700.00 per month and due on the 1st day of each month with a security deposit in the amount of \$350.00 collected on this tenancy on or about 30 March 2020. The landlord demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is \$1000.00 up to and including 28 February 2021. The landlord stated as of the hearing date 16 February 2021 the tenant remained in the unit and rent is outstanding.
12. The landlord testified that monthly rent is paid by AES and the arrears are from October and November 2020.

Analysis

13. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
14. Rent arrears are paid on a first in first out accounting practice (FIFO).
15. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the written rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 January 2021 has not been paid leaving a balance of **\$1000.00**. Further, rent for February 2021 can only be calculated up to and including the day of the hearing (16 February 2021). That calculation is $(\$700.00 \times 12 \text{ months} = \$8400.00 \div 365 \text{ days} = \$23.01 \text{ per day} \times 16 \text{ days} = \$368.16)$. Rent for February 1 – 16, 2021 is **\$368.16**.
16. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$23.01** beginning on **17 February 2021** and continuing until the day the landlord obtain vacant possession of the rented premises.

Decision

17. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 31 January 2021 \$1000.00
 - b) Rent owing for February 1 – 15, 2021 368.16
 - c) Sub-Total..... \$1368.16
 - d) **LESS: Payment from AES 01 February 2021(\$700.00)**
 - e) **Total due to Landlord..... \$668.16**
 - f) A daily rate beginning 17 February 2021 **\$23.01**

Issue 2: Return of Possessions - \$229.99

Landlord Position

18. The landlord testified that he is seeking the replacement cost of a dehumidifier that was in the property at the beginning of the tenancy. The landlord claims that the unit is now missing from the rented premises and presented a receipt from Canadian Tire (**Exhibit L # 4**) for the purchase of the dehumidifier in the amount of \$199.99 plus HST for a total of \$229.99.

Analysis

19. The landlord is seeking costs associated for a missing dehumidifier in the rented premises. It is the responsibility of the applicant in this sort of claim to show on the Balance of Probabilities that the item being claimed was in the property, a cost to replace and that the respondent is responsible for the item missing.
20. The landlord has established a cost with the receipt from Canadian Tire. Beyond this, there is little other evidence other than the applicant's testimony that the item is missing and the tenant is responsible. This is not supporting evidence.
21. As the landlord has failed to substantiate the claim for the missing item, I find the claim lacks merit and as such, does not succeed.

Decision

22. The landlord's claim for a missing dehumidifier fails.

Issue 3: Vacant Possession of the Rented Premises

Landlord Position

23. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
24. The landlord testified that when the tenant fell in arrears, he issued a termination notice under Section 19 of the Act (**Exhibit L # 3**) to terminate the tenancy on 25 January 2021. He testified that the notice was served personally and as of the hearing date (16 February 2021), the tenant remained in the unit. The landlord testified that there are 2 adults living in the unit.

Analysis

25. Established by undisputed statement of fact above, the rental agreement is a written fixed term tenancy which has since converted to the month to month tenancy. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 19. (1)(b), (4) and 34 as well as the service requirements identified in Section 35.
26. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.
27. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenant a termination notice to vacate the property not less than 10 days after the notice is served on the tenant. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 3**), I find the

notice was served on 13 January 2021 with a termination date of 25 January 2021. As established above, rent had been in arrears since October 2020. As rent had been in arrears for 30 plus days, I find this is well beyond the 5 day requirement set out in the Act. I further find that as the date of termination identified on the notice is 10 clear days between the date the notice was issued and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).

28. Sections 19. (4) and 34 below identify the technical requirements of the termination notice. 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.*

29. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under Section 35.
30. According to the reasons identified above, I find that the termination notice issued by the landlord 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 certifying an order at Residential Tenancies and costs associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

31. The landlord's claim for vacant possession succeeds. The landlord is further awarded cost associated with the certification of an order and the enforcement of the Possession Order by the High Sheriff of NL.

Issue 3: Hearing Expenses

Landlord Position

32. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (Exhibit L # 5). The landlord is seeking this cost.

Analysis

33. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

34. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

35. The landlord is entitled to the following:

a)	Rent Owing (Up to and including 16 February 2021)	\$668.16
b)	Hearing Expenses	<u>\$20.00</u>
c)	Total Owing to the Landlord	\$688.16
d)	Vacant Possession of the Rented Premises	
e)	A daily rate of rent set at \$23.01 beginning 17 February 2021 and continuing until the day the landlord obtains vacant possession of the Rented Premises.	
f)	Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order	
g)	Any incurred costs associated with the certification of attached orders.	

25 February 2021

Date

Michael Greene
Residential Tenancies Tribunal