

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0001-03

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:37 pm on 15 January 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The landlords, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2 respectively, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
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 reflect the legal name of landlord2 to be [REDACTED].

### Issues before the Tribunal

6. The landlords are seeking the following:
  - a) Payment of rent owing **\$1400.00**;
  - b) Vacant possession of the rented premises;
  - c) Hearing expenses.

## **Legislation and Policy**

7. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
8. 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 - \$1400.00**

#### **Relevant Submissions**

##### Landlord Position

9. Landlord1 stated that she had entered into a verbal monthly rental agreement with the tenant, commencing October 2014. The agreed rent was set at \$700.00 per month and due on the 1<sup>st</sup> day of each month with no security deposit collected on this tenancy. Landlord1 stated that no rent was received from the tenant for December 2018 and as of the hearing no rent for January 2019 was received as demonstrated in the landlords' rental records (Exhibit L # 2) as total rent outstanding is \$1400.00 up to and including 31 January 2019. Landlord1 stated as of the hearing date 15 January 2019 the tenant remained in the unit and no rent has been paid.

##### Tenant Position

10. The tenant stated that he owes the rent that the landlords are claiming. The tenant stated that he is unemployed and receiving income support. He further added that he is unable to pay the rent owed and is currently seeking a new rental premises.

#### **Analysis**

11. I have reviewed the testimony and evidence of the landlords and tenant 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 landlords actually owed by the tenant.
12. With respect to the arrears being claimed, I agree with landlord1 and the acknowledgement of the tenant 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 verbal rental agreement established when the tenancy began. Records are clear that rent for December 2018 has not been paid in the amount of **\$700.00**. Further, rent for January 2019 came due on January 1, 2019; however, for the purpose of this decision can only be calculated up to and including the day of the hearing (15 January 2019). That calculation is  $(\$700.00 \times 12 \text{ months} = \$8400.00 \div 365 \text{ days} = \$23.01 \text{ per day} \times 15 \text{ days} = \$345.15)$ . Rent for January 2019 then is **\$345.15**. Additionally, the tenant is responsible for rent on a daily basis in the

amount of **\$23.01** beginning on 16 January 2019 and continuing until the day the landlords obtain vacant possession of the rented premises.

## **Decision**

13. The landlords' total claim for rent succeeds as follows:
  - a) Rent owing for December 2018 ..... \$700.00
  - b) Rent owing for January 1 – 15, 2019 ..... 345.15
  - c) Total Arrears ..... **\$1045.15**
  - d) A daily rate beginning January 16, 2019 ..... **\$23.01**

## **Issue 2: Vacant Possession of the Rented Premises**

### Landlord Position

14. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
15. Landlord1 testified that when the tenant fell in arrears, she issued a termination notice under Section 19 of the Act (Exhibit L # 1) to terminate the tenancy on January 12, 2019. She testified that the notice was served personally and as of the hearing date (January 15, 2019), the tenant remained in the unit. Landlord1 testified that there is 1 adult living in the unit.

### Tenant Position

16. The tenant stated that he is unable to pay what is owed in arrears as he lost his job and was forced to go on income support. He further added that he always paid his rent on time and regrets the current situation. The tenant acknowledged receiving the termination notice from the landlords. He stated he is currently looking for other accommodations.

## **Analysis**

17. Established by undisputed statement of fact in paragraph 9, the rental agreement is periodic monthly 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.
18. The issue of rental arrears has been determined in paragraph 13 above confirming that the tenant owes rent to the landlords.
19. 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 # 1), I find the

notice was served on January 1, 2019 with a termination date of January 12, 2019. As established in paragraph 9 and undisputed by the tenant, rent had been in arrears since December 1, 2018. As rent had been in arrears for 30 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).

20. 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*

21. As identified in paragraph 15 and undisputed by the tenant, landlord1 testified that she served the termination notice personally which is a permitted method of service identified under Section 35.
22. According to the reasons identified above, I find that the termination notice issued by the landlords to be proper and valid. Therefore, the landlords are entitled to an order for vacant possession of the property along with an order for any and all costs, pursuant to Section 47.(1)(q) of the Act, associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

**Decision**

23. The landlords' claim for vacant possession succeeds. The landlords are further awarded costs associated with the enforcement of the Possession Order by the High Sheriff of NL.

## Issue 3: Hearing Expenses

### Landlord Position

24. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (Exhibit L # 3). The landlords are seeking this cost.

### Tenant Position

25. The tenant was fine with this request and understood the basis of the request.

### **Analysis**

26. I have reviewed the testimony and evidence of the landlords and tenant in this matter. The expenses incurred by the landlords 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**

27. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

### **Summary of Decision**

28. The landlords are entitled to the following:

- a) Rent Owing ..... \$1045.15
- b) Hearing Expenses ..... \$20.00
- c) Total Owing to the Landlords ..... \$1065.15**
- d) Vacant Possession of the Rented Premises
- e) A daily rate of rent set at **\$23.01** beginning January 16, 2019 and continuing until the day the landlords obtain vacant possession of the Rented Premises.
- f) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

January 18, 2019

Date

Michael Greene  
Residential Tenancies Tribunal