

Residential Tenancies Tribunal

[REDACTED] Decision 19-080-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 21 February 2019 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. Her co-applicant, [REDACTED], did not participate. He was represented by [REDACTED] and a letter of authorization is on file.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, 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 \$300.00;
 - b. 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 19 and 24 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

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. With her application the landlord submitted affidavits stating that the tenants were served with notice of the hearing on 05 February 2019 and they have had 15 days to provide a response. 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.
8. The landlord amended her application at the hearing and stated that she was now seeking \$622.69 in rental arrears.
9. The landlord called the following witness: [REDACTED] – tenant at [REDACTED]
[REDACTED].

Issue 1: Rent Owing - \$622.69

Relevant Submissions

The Landlord's Position

10. The landlord stated that she had entered into monthly rental agreement with the tenants on 25 June 2018 and a copy of that executed agreement was submitted at the hearing. The agreed rent was set at \$850.00 and the tenants paid a security deposit of \$425.00. The landlord stated that \$750.00 of the rent was paid to her each month, on the tenants' behalf, by the Department of Advanced Education, Skills and Labour (AESL).
11. The landlord submitted rent records at the hearing showing the payments she had received from AESL and the tenants since the tenancy began. She testified that she had been regularly receiving the rent payments from AESL but claimed that, besides the security deposit payment, she had only received 2 rent payments from the tenants: \$250.00 on 11 September 2018 and \$200.00 on 20 November 2018.
12. According to the landlord's calculations, the tenants owe her \$622.69 in rent for the period ending 28 February 2019.

Analysis

13. I accept the landlord's claim that the tenants had not been paying rent as required. Based on the testimony and evidence submitted at the hearing, I calculate that the tenants owe \$637.69, for the period ending 28 February 2019, determined as follows:

Date	Charge	AESL Payment	Tenant Payment	Balance
01 Jul 2018	\$850.00			\$850.00
01 Aug 2018	\$850.00			\$1700.00
02 Aug 2018		\$1122.00		\$578.00
30 Aug 2018		\$750.00		(\$172.00)
01 Sep 2018	\$850.00			\$678.00
11 Sep 2018			\$250.00	\$428.00
01 Oct 2018	\$850.00			\$1278.00
01 Oct 2018		\$750.00		\$528.00
01 Nov 2018	\$850.00			\$1378.00
02 Nov 2018		\$750.00		\$628.00
20 Nov 2018			\$200.00	\$428.00
01 Dec 2018	\$850.00			\$1278.00
01 Dec 2018		\$369.25		\$908.75
01 Dec 2018		\$371.06		\$537.69
31 Dec 2018		\$750.00		(\$212.31)
01 Jan 2019	\$850.00			\$637.69
01 Feb 2019	\$850.00			\$1487.69
01 Feb 2018		\$850.00		\$637.69

14. However, as the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter. I calculate the rent owing to the date of the hearing to be \$374.64 (\$637.69 for the period ending 31 January 2019 less a credit of \$263.05cr for February 2019 (\$850.00 per month x 12 months = \$10200.00 per year ÷ 365 days = 27.95 per day x 21 days = \$586.95 less the payment of \$850.00 received from AESL on 01 February 2019)).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$374.64.

16. The tenants shall pay a daily rate of rent in the amount of \$27.95, beginning 22 February 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlord's Position

17. With her application, the landlord submitted a termination notice which she stated she had posted on the tenants' door on 30 January 2019. This notice was issued under 2 different sections of the *Residential Tenancies Act, 2018*: section 19 (notice where failure to pay rent) and section 24 (notice where tenant contravenes peaceful enjoyment and reasonable privacy).
18. With respect to the issue of rent, the landlord pointed out that the tenants had been in arrears since they moved into the rental unit. She stated that although she had been regularly receiving the \$750.00 monthly payment from AESL, the tenants had only made 2 rent payments during her tenancy, with the last payment being made in November 2018.
19. With respect to the issue of peaceful enjoyment, the landlord stated that she had been receiving complaints from the tenants who resided in the upstairs apartment, [REDACTED] and [REDACTED], about the noise coming from the tenants' downstairs unit. [REDACTED] was called as a witness.
20. [REDACTED] testified that she has had to call the police on 3 different occasions because of the behaviour of the tenants. She stated that the first call to the police was made on 17 January 2019 after tenant2 challenged [REDACTED] to a fight and after he had threatened to "burn them out." The police were called a second time on 19 January 2019 because both tenant1 and tenant2 were screaming at [REDACTED] and [REDACTED] from their unit, calling them "ratbags" and "cowards". On that same day, [REDACTED] also complained that the tenants were, for about an hour, constantly activating the panic button alarm on their car. [REDACTED] stated that she had to call the police a third time on 27 January 2019. On that date, tenant2 came to [REDACTED] apartment and stuck his leg in her door preventing her from closing it. Tenant2 was again challenging [REDACTED] to a fight and he was again calling them "ratbags" and "cowards" and referred to [REDACTED] as a "whore".
21. [REDACTED] testified that because of the behaviour of the tenants she has had to install a security camera at her unit and she indicated at the hearing that she was fearful of being alone and was concerned about her husband's impending time away from Newfoundland for work.
22. The landlord testified that she had also called the police on 27 January 2019 as tenant2 had become hostile towards her in a telephone conversation.
23. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

24. The landlord's termination notice, served on the tenants on 30 January 2019, was issued under 2 different sections of the *Residential Tenancies Act, 2018*, section 19 and section 24.
25. Section 19 of the *Act* 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.

26. As the landlord's termination notice has an effective termination date of 05 February 2019, I find that it does not meet the timeframe requirements set out in this section of the *Act*. According to this section of the *Act*, on 30 January 2019 the earliest date the landlord could require the tenants to vacate would be 10 clear days after the notice was issued: 09 February 2019. As such, the landlord's claim for an order for possession of the rented premises cannot succeed on the grounds that the tenants had failed to pay their rent.
27. Regarding the issue of peaceful enjoyment, statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

and according to section 24 of this Act:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) 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.***

28. I found the testimony of the landlord and her witness to be credible and I accept their claims that the tenants had been acting in a threatening and antisocial manner. The sort of behaviour described by the landlord's witness is unreasonable and I accept her claim that this behaviour had interfered with her quiet and peaceful enjoyment of her apartment and that she is feeling anxious and fearful.
29. As section 24 of the Act only requires that the landlord specify a termination that is not less than 5 day after the notice after the notice is issued, I find that this notice meets the requirements set out in that section of the Act. As such, the landlord's claim for an order for vacant possession succeeds.

Decision

30. The landlord's claim for an order for vacant possession of the rented premises succeeds.
31. 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 3: Hearing Expenses

32. The landlord submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application, a receipt for \$6.05 for the costs of purchasing a copy of the *Residential Tenancies Act, 2018*, receipts totalling \$20.83 for the costs of developing photographs and a receipt for \$3.31 for windshield washer fluid.
33. As the landlord's claim has been successful, the tenants shall pay the landlord's hearing expenses. The landlord's purchase of the *Residential Tenancies Act, 2018* and the washer fluid are not expenses related to this hearing. As such, the landlord's claim for hearing expenses succeeds in the amount of \$40.83.

Issue 5: Security Deposit

34. The landlord testified that the tenants paid a security deposit of \$425.00 on 19 June 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlords' claim for rent (\$374.64) and hearing expenses (\$40.83) has been successful, she is authorized to retain \$415.47 of the security deposit.

Summary of Decision

35. The landlord is entitled to the following:
 - The landlord is authorized to retain \$415.47 of the security deposit.
 - The tenants shall pay a daily rate of rent in the amount of \$27.95, beginning 22 February 2019 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.

25 February 2019

Date

John R. Cook
Residential Tenancies Tribunal