

## **Residential Tenancies Tribunal**

Decision 19-0024-01

Michael Greene  
Adjudicator

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### **Introduction**

1. The hearing was called at 2:25 pm on 17 April 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via teleconference through the Bell Aliant Teleconferencing system.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$700.00 per month and due on the 1<sup>st</sup> of each month. There was a security deposit in the amount of \$500.00 collected on the tenancy in two payments (June 20, 2016 and July 6, 2016). The landlord issued a termination notice dated 1 April 2019 for the intended termination date of 12 April 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
5. 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

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 **02 April 2019** by serving the documents to the tenant via electronic means to the email address: [REDACTED] and has supplied copies of the sent email and verification through Exhibit L # 4 where the tenant has provided the landlord with the email address. The tenant has had **14 days** to provide a response.

Phone contact was attempted to the tenant prior to the hearing with the following results:

[REDACTED] ***No Answer, message left for the tenant to call the conference line.***

As the tenant was 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 in the tenant's absence.

## Issues before the Tribunal

7. The landlord is seeking the following:
  - a) Vacant possession of the rented premises (Section 19)
  - b) Hearing expenses

## Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. 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 - \$509.00

### Relevant Submissions

#### Landlord Position

10. The landlord stated that the parties entered into a written rental agreement with the tenant, commencing 20 June 2016. The agreed rent was set at \$700.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$500.00 collected on this tenancy in two payments (20 June 2016 & 6 July 2016). The landlord issued a termination notice (Exhibit L # 2) for the intended termination date of 12 April 2019. The landlord stated as of the hearing date 17 April 2019 rent remains outstanding.
11. The landlord has indicated that rent for the month of April is outstanding in the amount of \$509.00 (Exhibit L # 3) which has been carried forward from February 2019.

### Analysis

12. I have reviewed the testimony and evidence of the landlord in this matter. The landlord has not sought any remediation for the rent owed. The claim of rent is required to establish the conditions of the type of termination notice issued in this claim for vacant possession. 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 tenant.
13. 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 rental agreement established when the tenancy began. Records are clear that rent is owing up to and including March 31, 2019 in the amount of \$509.00. Rent for April 2019 can only be awarded up to and including the hearing date (17 April 2019) and on a daily rate of rent beyond the hearing date calculated as (\$700.00 X 12 months = \$8400.00 ÷ 365 days = \$23.01 per day x 17 days = \$391.17). Rent for April 1 – 17, 2019 then is **\$391.17**.

## Decision

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

a) Rent owing up to March 31, 2019 .....	\$509.00
b) Rent owing for April 1 – 17, 2019.....	<u>391.17</u>
c) Subtotal.....	\$900.17
d) LESS: April 1, 2019 payment .....	<u>(\$700.00)</u>
e) Total Arrears .....	<u>\$200.17</u>

15. As the landlord has not asked for remediation of rent owing in the claim, the determination of rent owing is being used solely for the purpose to determine the validity of the termination notice issued.

## Issue 3: Hearing Expenses

### Landlord Position

16. 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) along with a fee to purchase software required to convert text to print for the purpose of the hearing in the amount of \$53.00 (Exhibit L # 6). The landlord is seeking these costs.

### Analysis

17. 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

18. The tenant shall pay the reasonable expenses of the landlord in the amount of \$73.00.

## Issue 4: 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 tenant is in rental arrears and indicated that a notice to terminate was issued under Section 19 of *the Act* (Exhibit L # 2) to terminate the tenancy on 12 April 2019. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 1 April 2019. The landlord indicated that as of the hearing date (17 April 2019), the tenant remained in the unit. The landlord further testified that to the best of her knowledge, there is 1 adult and 1 minor child approximately aged 17 years 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 tenant does 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 tenant's rent is overdue for 5 days or more, the landlord may terminate the tenancy and the tenant is 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 # 2), I find the notice was served on 1 April 2019 with a termination date of 12 April 2019. As established in paragraph 13, the tenant owes 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 tenant is 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 in paragraph 20, 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 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 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) Hearing Expenses ..... \$73.00
- b) **Total owing to Landlord** ..... \$73.00
- c) **Vacant Possession of the Rented Premises**
- d) **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.**

3 May 2019

**Date**

  
**Michael Greene**  
**Residential Tenancies Tribunal**