

## Residential Tenancies Tribunal

Decision 19-0028-02

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:45 pm on 09 March 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. (*Affirmed*)
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*)
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$800.00 per month and due on the 1<sup>st</sup> of each month. There was a security deposit in the amount of \$400.00 collected on the tenancy on or about 14 May 2019. The landlord issued a termination notice dated 08 November 2019 for the intended termination date of 19 November 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 **14 February 2020** by serving the documents to the tenant personally at the rental unit address. The tenant has had **23 days** to provide a response.

There was no contact information on file for the tenant to make contact prior to the commencement of the hearing.

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.
8. The landlord amended the claim at the onset of the hearing to increase the amount of rent being claimed to \$3700.00 reflecting rent that has come due since the filing of the claim for the month of March 2020.

## Issues before the Tribunal

9. The landlord is seeking the following:
  - a) Vacant possession of the rented premises
  - b) Payment of rent owing **\$3700.00**
  - c) Utilities Owing

## Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. 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 - \$3700.00

### Relevant Submissions

#### Landlord Position

12. The landlord stated that the parties entered into a written rental agreement commencing 01 June 2019. The agreed rent was set at \$800.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$400.00 collected on or about 14 May 2019. The landlord issued a termination notice (**Exhibit L # 4**) for the intended date of 19 November 2019. The landlord further submitted into evidence a copy of the rental records (**Exhibit L # 2**) and the rental agreement (**Exhibit L # 1**). The landlord testified that rent was outstanding and the tenant remains in the unit. The landlord stated as of the hearing date 09 March 2020 rent remains outstanding.

### Analysis

13. I have reviewed the testimony and evidence of the landlord in this matter. 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.
14. 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 29 February 2020 in the amount of **\$2900.00**. Rent for March 2020 can only be awarded up to and including the hearing date (09 March 2020) and on a daily rate of rent beyond the hearing date calculated as  $(\$800.00 \times 12 \text{ months} = \$9600.00 \div 366 \text{ days} = \$26.23 \text{ per day} \times 9 \text{ days} = \$236.07)$ . Rent for March 1 – 9, 2020 then is **\$236.07**.
15. Respective of the rent for the remainder of the month of March 2020 and beyond, the landlord is further awarded a daily rate of rent in the amount of \$26.23 commencing on 10 March 2020 and continuing until the day the landlord obtains vacant possession of the property.

## Decision

16. The landlord's total claim for rent succeeds as follows:
- a) Rent owing up to 29 February 2020 ..... \$2900.00
  - b) Rent owing for March 1 – 9, 2020 ..... 236.07
  - c) Total Arrears ..... **\$3136.07**
  - d) The landlord is awarded a daily rate of rent in the amount of **\$26.23** beginning on 10 March 2020 and continuing until the day the landlord obtains vacant possession of the property.

## Issue 2: Utilities (NL Power) - \$945.19

### Relevant Submissions

#### Landlord Position

17. The landlord testified that the tenant failed to make the required payments towards the electrical account as required by the rental agreement (**Exhibit L # 1**). The landlord stated that the arrangement is such that the tenant is responsible for  $\frac{1}{2}$  the utility bill. The landlord testified that during the tenancy there was only a \$50.00 payment made toward the electrical account (**Exhibit L # 2**). The landlord is claiming a total of **\$945.16** in utilities and submitted a series of NL Power Invoices (**Exhibit L # 3**) which totaled \$987.48.

### Analysis

18. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the utilities that is being claimed (electrical expenses) by the landlord actually owed by the tenant.
19. With respect to the utilities being claimed, I agree with the landlord that this charge is the responsibility of the tenant. The cost of heating the rented property is that of the tenant's responsibility for the period of use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. The evidence presented by the landlord however is slightly off with respect to amounts.
20. The total amount claimed for utilities in the rent ledger (**Exhibit L # 2**) is \$995.41. The total amount of utilities from the NL Power Invoices (**Exhibit L # 3**) is 987.48. The lesser of the two is the actual invoices and as such this is the amount that will actually be used in any calculations.

21. I accept the evidence of the landlord as being reasonable that the tenant utilized the electrical services of the property and failed to reimburse the landlord. The following is the calculated amount of electrical outstanding up to the February 2020 billing:

NL Power Invoice Totals:	\$987.48
Amounts Paid by Tenant:	<u>50.00</u>
<b>Total Outstanding:</b>	<b><u>\$937.48</u></b>

22. I find that based on the records provided, the tenant owes for the electrical expenses in the amount of **\$937.48** for the billing period ending February 2020.

### **Decision**

23. The landlord's claim for utilities succeeds in the amount of \$937.48.

### **Issue 3: Vacant Possession of the Rented Premises**

#### Landlord Position

24. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
25. 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 # 4**) to terminate the tenancy on 19 November 2019. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on 08 November 2019. The landlord indicated that as of the hearing date (09 March 2020), the tenant remains in the unit. The landlord further testified that to the best of his knowledge, there are 2 adults and two minor children under the age of 12 living in the unit.

#### **Analysis**

26. 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.
27. 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.

28. 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 # 4**), I find the notice was served on 09 November 2019 with a termination date of 19 November 2019. As established above, 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).
29. 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.*

30. As identified above, the landlord testified that the termination notice was served personally which is a permitted method of service identified under section 35.
31. 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

32. 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

33. The landlord is entitled to the following:

- a) Rent Owing (up to and including 09 March 2020).....\$3136.07
- b) Utilities ..... \$937.48
- c) **Total owing to Landlord** ..... **\$4073.55**
  
- d) **Vacant Possession of the Rented Premises**
- e) **A daily rate of rent in the amount of \$26.23 beginning 10 March 2020.**
- f) **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.**

23 March 2020

Date

Michael Greene  
Residential Tenancies Tribunal