

Residential Tenancies Tribunal

Decision 19-0044-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:50 am on 31 May 2019 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 landlord1, participated in the hearing.
3. The applicant, [REDACTED], hereafter referred to as the landlord2, did not participate in the hearing and was not represented.
4. The respondent, [REDACTED], hereafter referred to as the tenant participated in the hearing.
5. The details of the claim were presented as a written fixed term rental agreement with rent set at \$750.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$400.00 was collected on this tenancy on or about February 15, 2019. The landlord issued a termination notice dated 25 April 2019 for the intended termination date of 06 May 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
6. 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

7. The landlord and tenant both requested that the second named tenant, [REDACTED], to be removed from the file. This amendment was made as requested.
8. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **17 May 2019** by serving the application for dispute resolution document to the tenant personally (process server) at the rental unit address. The tenant has had **13 days** to provide a response.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$750.00**
 - c) Payment of late fees **\$75.00**
 - d) Hearing expenses

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 - \$750.00

Relevant Submissions

Landlord Position

12. The landlord stated that he had entered into a written fixed term rental agreement with the tenant, commencing 01 March 2019 and set to expire on 01 March 2020. The agreed rent was set at \$750.00 per month and due on the 1st day of each month with a security deposit in the amount of \$400.00 collected on this tenancy on or about 15 February 2019. The landlord issued a termination notice (**Exhibit L # 2**) on 25 April 2019 for the intended date of 06 May 2019 (section 19). The landlord stated that rent was outstanding in the amount of \$750.00 for the period

ending 31 May 2019 and stated that rent was paid by the tenant on 08 May 2019 (**Exhibit T # 1 & 2**).

Tenant Position

13. The tenant testified that as of 25 April 2019 when he received a copy of the termination notice, he owed a total of \$475.00 for the month of April 2019. Rent for May 2019 came due on 01 May 2019 and the balance outstanding increased to \$1175.00. The tenant stated that he paid rent on 06 May 2019 in the amount of \$425.00 covering April 2019 (**Exhibit T # 2**). The tenant further stated that on 08 May 2019 he paid rent in the amount of \$750.00 for the month of May 2019 (**Exhibit T # 1**). The tenant stated that because he paid April's rent before the termination date, that he feels this notice (**Exhibit L # 2**) to be null and void.

Analysis

14. I have reviewed the testimony and evidence of the landlord and tenant 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.
15. With respect to the arrears being claimed, I agree with the landlord and tenant that as of the hearing date no rent is owed. Rent is required to be paid by the tenant on or before the day rent is due 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 for the period ending 30 April 2019 (\$425.00) was outstanding and not paid until 06 May 2019. Rent outstanding for May 2019 was paid by the tenant on 08 May 2019 in the amount of \$750.00. As such, there are no rental arrears owing by the tenant.
16. The landlord is further awarded a daily rate of rent in the amount of \$24.66 (\$750.00 X 12 months = \$9000.00 ÷ 365 days = \$24.66 per day) commencing on 01 June 2019 and continuing until the day the landlord obtains vacant possession of the property.

Decision

17. The landlord's total claim for rent succeeds as follows:
 - a) The landlord is awarded a daily rate of rent in the amount of \$24.66 beginning on 01 June 2019 and continuing until the day the landlord obtains vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

18. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
19. The landlord testified that the tenant has been in arrears since 01 April 2019. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Tenant Position

20. The tenant acknowledged owing the late fees.

Analysis

21. Established by undisputed fact in paragraph 15, the tenant was in arrears for the period ending 08 May 2019. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
22. Given the tenant has been in arrears since 01 April 2019, the calculated amount of late fees are as follows:

a. April 2 (1 st day late @ \$5.00) -	\$5.00
b. April 3 – 30 (@ \$2.00/day) -	54.00
c. May 1 – 8, 2019 (@ \$2.00/day)-	<u>16.00</u>
d. Total Late Fees	\$75.00
23. The issue of rental arrears has been determined in paragraph 15 above confirming that the tenant owed rent to the landlord up to 08 May 2019.

Decision

24. The landlord's claim for late fees succeeds in the amount of \$75.00 as per the regulations established under the *Residential Tenancies Act, 2018*.

Issue 3: Hearing Expenses

Landlord Position

25. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 3**). The landlord further paid a process server \$25.00 to serve the claim documents to the tenant (**Exhibit L # 4**). The landlord is seeking these costs.

Analysis

26. 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

27. The tenant shall pay the reasonable expenses of the landlord in the amount of \$45.00.

Issue 4: Vacant Possession of the Rented Premises

Landlord Position

28. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
29. The landlord testified that the tenant has failed to pay all outstanding rent and late fees as required by the rental agreement prior to the termination date of 06 May 2019. The landlord submitted a copy of the termination notice (**Exhibit L # 2**) issued to the tenant on 25 April 2019 for the intended termination date of 06 May 2019 thereby terminating the tenancy effective 06 May 2019.
30. The landlord acknowledged that the tenant paid a portion of the arrears on 06 May 2019 and the balance of the rent outstanding on 08 May 2019. The landlord testified that the late fees were never paid.
31. The landlord testified that the notice to terminate was served to the tenant on 25 April 2019 for the intended termination date of 06 May 2019 by placing a copy on the rented premises. The landlord indicated that as of the hearing date (31 May 2019), the tenant remained in the unit.

Tenant Position

32. The tenant testified that he did receive the termination notice from the landlord and that he paid rent on 06 May 2019 and the balance of rent on 08 May 2019. The tenant testified that he has not paid the late fees as of the hearing but is willing to pay the amount owing.

Analysis

33. 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.
34. The issue of rental arrears has been established in paragraph 15 above. There is no doubt that the tenant owed rent to the landlord and has failed to pay all the arrears by the ending date of the termination notice (06 May 2019).
35. The landlord issued a termination notice under section 19 of the *Residential Tenancies Act* by placing a copy on the rented premises. Section 19 requires that the landlord provide notice to the tenant that the rental agreement is terminated and the tenant is required to vacate the property on a specified date not less than 10 days after the notice has been served. I accept the evidence of the landlord and find that the tenant failed to make the required rent payments thereby accumulating rental arrears and were not paid in full until after the termination date of the notice.
36. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 25 April 2019 with a termination date of 06 May 2019. As established in paragraph 15, the tenant had outstanding rent beyond the date of termination. I further find that as the date of termination identified on the notice is not less than 10 days after the notice has been served and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of section 19(4). 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.*

37. As identified above, the landlord testified that he served the termination notice by placing a copy on the rented premises which is a permitted method of service identified under section 35.
38. 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

39. 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

40. The landlord is entitled to the following:

a)	Late Fees.....	75.00
b)	Hearing Expenses	<u>\$45.00</u>
c)	Total owing to Landlord	\$120.00

- d) Vacant Possession of the Rented Premises.
- e) A daily rate of rent in the amount of \$24.66 beginning 01 June 2019.
- 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.

5 June 2019

Date

Michael Greene
Residential Tenancies Tribunal