

Residential Tenancies Tribunal

[REDACTED] Decision 19-0054-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 14 June 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via tele-conference to Mt. Pearl Residential Tenancies Office, 149 Smallwood Drive, Mt. Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as landlord1, participated in the hearing.
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing.
4. The respondent, [REDACTED], hereafter referred to as the tenant participated in the hearing. The tenant was represented by [REDACTED] at the hearing.
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$475.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$372.00 was collected on the tenancy. The landlord issued a termination notice dated 17 May 2019 for the intended termination date of 28 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 affidavit submitted by the landlords show that the tenant was served with the notice of this hearing on the **03 June 2019** by serving the application for dispute resolution document to the tenant personally at the rental unit address.
8. Landlord1 amended the claim at the hearing to:
 - a. Change the spelling of the first name of the landlord to read “**[REDACTED]**”.
 - b. Change the spelling of the last name of the tenant to read “**[REDACTED]**”
9. The tenant representative was removed from the hearing room near the conclusion of the hearing because of behaviour toward the process and the other parties. The representative was granted some room given his role and his lack of familiarity with the process. He was advised on several occasions that he was a representative and not to provided commentary or evidence in the matter. Near the conclusion of the hearing, it became evident that the representative became anxious and his behaviour escalated to the point of confrontational. At this point the representative was asked to leave the hearing room as the behaviour would not be tolerated. He left willingly and without further incident.

Issues before the Tribunal

10. The landlords are seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$475.00**
 - c) Hearing expenses

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. 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 - \$475.00

Relevant Submissions

Landlord Position

13. Landlord1 stated that both parties had entered into a written rental agreement, commencing 15 February 2019. The agreed rent was set at \$475.00 per month and due on the 1st day of each month with a security deposit in the amount of \$372.00 collected on 15 February 2019. Landlord1 issued a termination notice (**Exhibit L # 2**) on 17 May 2019 for the intended date of 28 May 2019 (section 19). Landlord1 testified that as of the termination date (28 May 2019), the tenant failed to pay the assessed late fees with May 2019 rent and on 01 June 2019 rent came due again for June 2019. Landlord1 stated that rent was outstanding in the amount of \$475.00 for the period ending 30 June 2019 and stated as of the hearing date 14 June 2019 rent remains outstanding.

Tenant Position

14. The tenant acknowledged that rent in the amount of \$475.00 is outstanding for June and has not been paid. The tenant further acknowledged that late fees are also outstanding.
15. The tenant submitted a copy of a written rental agreement (**Exhibit T # 1**) into evidence.

Analysis

16. I have reviewed the testimony and evidence of the landlords 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 landlords actually owed by the tenant.
17. With respect to the arrears being claimed, I agree with both the landlords and tenant that rent is owed. The determination of the amount of rent owed can only rest with the records submitted from both parties. 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. Rent cannot be withheld without the direction through an order of the Residential Tenancies Division. Based on the evidence provided I find that rent for the period ending 31 May 2019 is outstanding in the amount of **\$0.00** (*late fees were outstanding and will be assessed in the following section of this decision*). Rent for the month of June 2019 can only be awarded up to and including the hearing date (14 June 2019) and is calculated as ($\$475.00 \times 12 \text{ months} = \$5700.00 \div 365 \text{ days} = \$15.62 \text{ per day} \times 14 \text{ days} = \218.68). Rent for June 1 – 14, 2019 then is **\$218.68**.

Table # 1: Rent Records

Date	Comment	Due	Payment	Balance
	Bal. Forward	\$ -	\$ -	\$0.00
15-Feb-19	Rent Due	\$ 221.00		(\$221.00)
15-Feb-19	Rent Paid		\$ 221.00	\$0.00
1-Mar-19	Rent Due	\$ 475.00		(\$475.00)
1-Mar-19	Rent Paid		\$ 475.00	\$0.00
1-Apr-19	Rent Due	\$ 475.00		(\$475.00)
1-Apr-19	Rent Payment		\$ 350.00	(\$125.00)
16-Apr-19	Rent Paid		\$ 125.00	\$0.00
1-May-19	Rent Due	\$ 475.00		(\$475.00)
1-May-19	Rent Payment		\$ 250.00	(\$225.00)
2-May-19	Late Fee Due	\$ 5.00		(\$230.00)
16-May-19	Late Fee Due (May 3 - 16, 19)	\$ 28.00		(\$258.00)
17-May-19	Rent Paid		\$ 240.00	(\$18.00)
31-May-19	Late Fees Due (May 17 - 31)	\$ 30.00		(\$48.00)
1-Jun-19	Rent Due	\$ 475.00		(\$523.00)
June 1 - 13	Late Fees Due (June 1 - 13) **	\$ 17.00		(\$540.00)

****Maximum late fees (\$75.00) as provided for under Regulations were reached.**

18. The landlords are further awarded a daily rate of rent in the amount of \$15.62 commencing on 15 June 2019 and continuing until the day the landlords obtain vacant possession of the property.

Decision

19. The landlords' total claim for rent succeeds as follows:

- Rent owing up to 31 May 2019..... \$00.00
- Rent owing for June 1 – 14, 2019 218.68
- Total arrears..... **\$218.68**

d) The landlords are awarded a daily rate of rent in the amount of \$15.62 beginning on 15 June 2019 and continuing until the day the landlords obtain vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

20. The landlords are seeking payment of late fees as a result of the tenant's failure to pay rent on time.
21. The landlords testified that the tenant has been in arrears since 01 May 2019. The landlords indicated that they are seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Tenant Position

22. The tenant acknowledged that she did not pay the late fees assessed by the termination date on the notice issued by the landlords.

Analysis

23. Established by undisputed fact above, the tenant was in arrears for the period ending 14 June 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.
24. It should be further noted that as of the termination date, the tenant was outstanding in the amount of \$18.00 reflecting late fees assessed and not paid. This fact was acknowledged by the tenant.
25. Given that the tenant has been in arrears since 01 May 2019, any calculated amount of late fees will exceed the maximum allowable per late period of \$75.00.
26. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlords.

Decision

27. The landlords' 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

28. Landlords 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 landlords are seeking this expense.

Analysis

29. 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

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

Issue 4: Vacant Possession of the Rented Premises

Landlord Position

31. The landlords are seeking to recover possession of the rented premises located at ██████████.
32. Landlord1 testified that the tenant has failed to pay rent as required by the rental agreement and has accumulated rental arrears. Landlord1 submitted a copy of the termination notice (**Exhibit L # 2**) issued to the tenant on 17 May 2019 for the intended termination date of 28 May 2019, thereby terminating the tenancy effective 28 May 2019.
33. The tenant has acknowledged that rent & late fees has not been paid.
34. Landlord1 testified that the notice to terminate was served to the tenant on 17 May 2019 by personal service. Landlord1 indicated that as of the hearing date (14 June 2019), the tenant remained in the unit.

Analysis

35. 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.
36. The issue of rental arrears has been established above. There is no doubt that the tenant owes rent/late fees to the landlords and has failed to pay all the arrears by the ending date of the termination notice (28 May 2019).
37. The landlords issued a termination notice under section 19 of the *Residential Tenancies Act* by personal service. Section 19 requires that the landlords 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 landlords and find that the tenant failed to make the required rent payments thereby accumulating rental arrears as calculated above.
38. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2**), I find the notice was served on 17 May 2019 with a termination date of 28 May 2019. As established above, the tenant has 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 tenants are 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.*

39. Landlord1 testified that they served the termination notice by personal service which is a permitted method of service identified under section 35.
40. 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 associated with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

41. 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.

Summary of Decision

42. The landlords are entitled to the following:

a)	Rent Owing (up to and including 14 June 2019).....	\$218.68
b)	Late Fees.....	75.00
c)	Hearing Expenses	<u>\$20.00</u>
d)	Total owing to Landlords	\$313.68
e)	Vacant Possession of the Rented Premises.	
f)	A daily rate of rent in the amount of \$15.62 beginning 15 June 2019 .	
g)	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.	

18 June 2019

Date


Michael Greene
Residential Tenancies Tribunal