

Residential Tenancies Tribunal

[REDACTED] Decision 19-0097-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 23 October 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 landlord1, participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], hereafter referred to as landlord2, did not participate in the hearing. (*Absent and Not Represented*)
4. The respondent, [REDACTED], hereafter referred to as tenant1, participated in the hearing. (*Affirmed*)
5. The respondent, [REDACTED], hereafter referred to as tenant2, did not participate in the hearing. (*Absent and Not Represented*)
6. The details of the claim were presented as a written monthly rental agreement with rent set at \$750.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$506.00 collected on the tenancy on or about 01 December 2010. The landlord issued a termination notice dated 08 September 2019 for the intended termination date of 19 September 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
7. 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

8. The affidavit submitted by landlord1 shows that the tenants were served with the notice of this hearing on the **20 September 2019** by serving the Application for Dispute Resolution documents to [REDACTED] by registered mail [REDACTED] and was signed for on 30 September 2019.
9. Tenant1 testified that Tenant2 would not be attending as he was working.
10. Landlord1 amended the claim at the onset to increase the amount of rent being claimed to \$2250.00 reflecting rent that has come due since the filing of the claim.

Issues before the Tribunal

11. The landlords are seeking the following:
 - a) Vacant possession of the rented premises
 - b) Payment of rent owing **\$2250.00**
 - c) Hearing expenses

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. 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 - \$2250.00

Relevant Submissions

Landlord Position

14. Landlord1 stated that the parties entered into a written rental agreement with the tenants, commencing 01 December 2010. 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 \$506.00 collected on or about 01 December 2010. The landlord issued a termination notice (**Exhibit L # 3**) for the intended date of 19 September 2019. Landlord1 further submitted into evidence a copy of the rental records (**Exhibit L**)

2) and the rental agreement (**Exhibit L # 1**). Landlord1 testified that rent was outstanding and the tenants remained in the unit. Landlord1 stated as of the hearing date 23 October 2019 rent remains outstanding.

Tenant Position

Tenant1 acknowledged the arrears as claimed by the landlords stating that they fell on hard times and couldn't afford to make the rent payments.

Analysis

15. I have reviewed the testimony and evidence of the landlords and tenants 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 tenants.
16. With respect to the arrears being claimed, I agree with landlord1 that rent is owed. Rent is required to be paid by the tenants 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 30 September 2019 in the amount of \$1500.00. Rent for October 2019 can only be awarded up to and including the hearing date (23 October 2019) and on a daily rate of rent beyond the hearing date calculated as ($\$750.00 \times 12 \text{ months} = \$9000.00 \div 365 \text{ days} = \$24.66 \text{ per day} \times 23 \text{ days} = \567.18). Rent for October 1 - 23, 2019 then is **\$567.18**.
17. Respective of the rent for the remainder of the month of October 2019, the landlords are further awarded a daily rate of rent in the amount of \$24.66 commencing on 24 October 2019 and continuing until the day the landlords obtain vacant possession of the property.

Decision

18. The landlords' total claim for rent succeeds as follows:
 - a) Rent owing up to 30 September 2019..... \$1500.00
 - b) Rent owing for October 1 - 23 2019 567.18
 - c) Total Arrears **\$2067.18**
 - d) The landlords are awarded a daily rate of rent in the amount of \$24.66 beginning on 24 October 2019 and continuing until the day the landlords obtain vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

19. The landlords are seeking payment of late fees as a result of the tenants' failure to pay rent on time.
20. Landlord1 testified that the tenants have been in arrears since 01 August 2019. Landlord1 indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

21. Established by undisputed fact above, the tenants were in arrears since 01 August 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. Any calculated amount of late fee would exceed the maximum allowable.
22. The issue of rental arrears has been determined in paragraph 13 above confirming that the tenants owe rent to the landlords.

Decision

23. The landlords' claim for late fees succeeds in the amount of the maximum allowable of \$75.00.

Issue 3: Hearing Expenses

Landlord Position

24. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 4**). The landlords further paid a fee in the amount of \$13.11 from Canada Post for the service of documents via registered mail [REDACTED]. The landlords are seeking these costs.

Analysis

25. I have reviewed the testimony and evidence of the landlord 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 tenants are responsible to cover these reasonable expenses.

Decision

26. The tenants shall pay the reasonable expenses of the landlords in the amount of \$33.11.

Issue 4: Vacant Possession of the Rented Premises

Landlord Position

27. The landlords are seeking to recover possession of the rented premises located at [REDACTED].
28. Landlord1 testified that the tenants are in rental arrears and indicated that a notice to terminate was issued under Section 19 of *the Act* (**Exhibit L # 3**) to terminate the tenancy on 19 September 2019. Landlord1 testified that the notice to terminate was served personally by the landlords to the tenants on 08 September 2019. Landlord1 indicated that as of the hearing date (23 October 2019), the tenants remained in the unit. Landlord1 further testified that to the best of his knowledge, there are 3 adults living in the unit.

Tenant Position

29. The tenants did not fully understand the consequences of what the landlords were asking when an order of possession in being sought. This was explained to tenant1. Tenant1 confirmed that there were three adults living in the unit.

Analysis

30. 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.
31. The issue of non-payment of rent has been outlined and established by the testimony of landlord1 along with documentary evidence presented by the landlords. I accept the evidence of the landlords and find that the tenants do owe rent as described in this decision above.
32. Section 19 (1)(b) requires that when a premises is rented for month to month and the tenants' rent is overdue for 5 days or more, the landlords may terminate the tenancy and the tenants are 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 # 3**), I find the notice was served on 09 September 2019 with a termination date of 19 September 2019. As established above, the tenants owe 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).

33. 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.*

34. As identified above, landlord1 testified that the termination notice was served personally which is a permitted method of service identified under section 35.

35. 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

36. 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

37. The landlords are entitled to the following:

- a) Rent Owing (up to and including 23 October 2019) \$2067.18
- b) Late Fees 75.00
- c) Hearing Expenses \$33.11
- d) **Total owing to Landlords \$2175.29**

- e) **Vacant Possession of the Rented Premises**
- f) **A daily rate of rent in the amount of \$24.66 beginning 24 October 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.**

06 November 2019

Date

Michael Greene
Residential Tenancies Tribunal

