

Residential Tenancies Tribunal

Decision 19-134-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 12:15 pm on 12 March 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", were in attendance at our offices prior to the commencement of the hearing but did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$500.00, and
 - b. An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. Both tenants were present at the Section's offices on the hearing date but decided not to participate in the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an

application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. With her application the landlord submitted an affidavit stating that the tenants were served with notice of the hearing, by e-mail, on 28 February 2019 and they have had 11 days to provide a response. As confirmation that the landlord had sent the claim and notice of the hearing to tenants at their actual e-mail address, she produced a text-message showing that Mr. Barber had sent her a message stating that this was his e-mail address. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

7. The landlord amended her application at the hearing and stated that she was no longer seeking an order for a payment of rent.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

8. With their application the landlord submitted a rental agreement (CS #1) showing that she had entered into a 1-year, fixed-term lease with the tenants commencing 08 November 2018. The agreed monthly rent was set at \$1400.00 and was due on the 1st day of each month.
9. For the period ending 31 January 2019, the landlord testified that the rent was paid and up-to-date. In February 2019, the tenants did not pay their rent on 01 February 2019, as required, and the landlord stated that she received a partial payment of \$900.00 on 05 February 2019, leaving the tenants in arrears in the amount of \$500.00.
10. Accordingly, on 09 February 2019 the landlord served the tenants a termination notice and a copy of that notice was submitted with her application (CS #2). This notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 20 February 2019.
11. The landlord stated that she did receive the remaining \$500.00 in rent from the tenants on 25 February 2019, but she pointed out that this payment was made 5 days after the effective termination date set out in her notice. Although the tenants are no longer in rental arrears, the landlord is nevertheless seeking an order for possession for the rented premises

Analysis

12. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

- (i) rented from month to month,*
- (ii) rented for a fixed term, or*
- (iii) a site for a mobile home, and*

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

13. According to the testimony given by the landlord at the hearing, on 09 February 2019, the day the termination notice was issued, the tenants had been in rental arrears for 7 days. Although they did eventually pay off those arrears, they failed to do so prior to the effective termination date set out in the notice.

14. As the notice meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.

Decision

15. The landlord's claim for an order for vacant possession of the rented premises succeeds.

16. The tenants shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

14 March 2019

Date

John R. Cook
Residential Tenancies Tribunal