

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0368-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 06 June 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED] hereafter referred to as landlord, participated in the hearing and was represented by [REDACTED] – Property Manager.
3. The respondent, [REDACTED] hereafter referred to as tenant, did not participate in the hearing.
4. In a proceeding under the *Residential Tenancies Act*, 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

5. The landlord amended the application at the onset to remove the request for vacant possession as the tenant had vacated the property on or about May 17, 2019.
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 May 2019** by serving the documents to the tenant personally at the rented premises and the tenant has had **22 days** to provide a response.

Phone contact was attempted to the respondent by calling the following numbers provided on the application. As indicated, contact was not successful.

- a) Phone call to [REDACTED] – No answer

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.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$761.09**;
 - b) Payment of late fees
 - c) Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. 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 - \$761.09

Relevant Submissions

Landlord Position

11. The landlord stated that they had entered into a month to month rental agreement with the tenant commencing 12 November 2015. The agreed rent is set at \$1005.00 per month and due on the 1st day of each month with a security deposit in the amount of \$712.50 collected on this tenancy on or about 05 November 2015. The landlord stated that the tenant vacated on or about 17 May 2019. The landlord demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is recorded as \$761.09 up to and including 31 May 2019. A termination notice was issued by the landlord dated 09 May 2019 for the intended termination date of 20 May 2019 under section 19 (**Exhibit L # 2**).

Analysis

12. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
13. The rental records show that the balance on the account as of 30 April 2019 was \$31.09.
14. The rental records supplied from the landlord shows that a pre-authorized payment (\$705.00) from the tenant for the month of May 2019 was returned as Non-Sufficient Funds (NSF). The landlord testified that the NSF fee of \$25.00 was applied to the account and stated that they did receive a \$300.00 payment in the form of a cheque and was applied to the account.
15. 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 written rental agreement established when the tenancy began. Records are clear that full rent for the period ending 17 May 2019 has not been paid leaving a balance of **\$317.77** determined as follows:

Rent owing up to 30 April 2019	\$31.09
Rent owing for May 1 – 17, 2019	561.68
NSF Fee Applied (May 2019)	<u>25.00</u>
Subtotal	\$617.77
LESS Payment received 03 May 2019	<u>(\$300.00)</u>
Rent Owing to Landlord	\$317.77

** $\$1005.00 \times 12 = \$12060.00 \div 365 \text{ Days} = \$33.04/\text{day} \times 17 \text{ days} = \561.68

Decision

16. The landlord's total claim for rent succeeds as follows:

- a) Rent owing up to 17 May 2019 \$317.77
- b) **Total Owing**..... **\$317.77**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

- 17. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
- 18. The landlord testified that the tenant has been in arrears since July 2018 according to rental records. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

- 19. Established by undisputed fact above, the tenant was in arrears since July 2018 and carried a rental balance. 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.
- 20. The issue of rental arrears has been determined in paragraph 15 above confirming that the tenant owes rent to the landlord.

Decision

- 21. The landlord's claim for late fees succeeds in the amount of the maximum allowable of \$75.00.

Issue 3: Hearing Expenses

Landlord Position

- 22. 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 is seeking this cost.

Analysis

23. 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

24. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00

Issue 4: Application of Security Deposit

Landlord Position

25. The landlord's original application did not seek the disposition of the security deposit but as the tenancy terminated after the filing of the application, the disposition of the security deposit being held by the landlord will be adjudicated on at the hearing.
26. The landlord testified that a security deposit in the amount of \$712.50 was paid on the property on or about 05 November 2015 according to rental records. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Analysis

27. Established by undisputed fact in above, the tenant did pay a security deposit to the landlord in the amount of \$712.50. The landlord's claim has been successful and the tenant does owe the landlord for rent, late fees and hearing expenses. The interest rate set out by the Minister on security deposits for 2015 to 2019 is set at 0%. The security deposit plus accrued interest then is \$712.50.

Decision

28. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held against any amount outstanding as directed in the attached order.

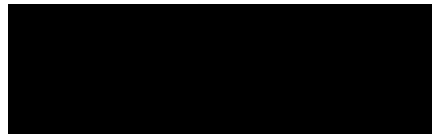
Summary of Decision

29. The tenant is entitled to the following:

a)	Rent Owing	\$317.77
b)	Late Fees	75.00
b)	Hearing Expenses	<u>\$20.00</u>
c)	Sub-total	\$412.77
d)	LESS: Security Deposit Retained	<u>(\$712.50)</u>
e)	Total Owing Tenant	\$299.73

1 November 2019

Date



Michael Greene
Residential Tenancies Tribunal