

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0031-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **01 June 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED] hereafter referred to as landlord1 participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED] hereafter referred to as landlord2 participated in the hearing. (*Affirmed*)
4. The respondent, [REDACTED] hereafter referred to as the tenant participated in the hearing. (*Affirmed*)
5. The details of the claim were presented as a written monthly agreement with rent set at \$925.00 per month, utilities extra and rent due on the 1st of each month. A security deposit in the amount of \$400.00 was collected on or about 31 October 2019 and remains with the landlords.
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 **26 March 2021** by serving the original documents to the tenant by email to the address [REDACTED] and supplying the verification of the email.

Issues before the Tribunal

8. The landlords are seeking the following:
 - a) Rent Owing **\$2775.00**;
 - b) Damages **\$205.00**;
 - c) Late Fees **\$150.00**;
 - d) Hearing Expenses;
 - e) Application of Security Deposit

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:
 - a. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
 - b. *Policy 9-2 Claims and Counter Claims*, and;
 - c. *Policy 9-3 Claims for Damage to Rental premises*.

Issue 1: Compensation for Damages - \$205.00

Relevant Submissions

Landlord Position

11. Landlord1 testified that when the property was recovered it was noticed that the unit required cleaning and the walk way to the rental property entrance was not shoveled of snow. The landlords presented photos of the entrance and walkway (**Exhibit L # 3**) along with a print out from Environment Canada regarding the snowfall amounts for January 2021 (**Exhibit L # 4**). The landlords testified that they are claiming for self-labor to clean the unit and shovel the walkway.
12. The landlords' claim is \$205.00 or 10 hours at \$20.50/hour.

13. The landlords claimed to have taken photos of the condition of the property, but did not provide them to the tenant or the tribunal for consideration.

Tenant Position

14. The tenant testified that she was locked from the unit while she was out of town and, therefore, she is not responsible for anything that happens or goes on with the unit after this point.

Analysis

15. I have reviewed the testimony and evidence of the landlords and tenant in this portion of the claim. The landlord applicants are required to establish three criteria for a successful claim as follows:
 - a. Show that the damage exists
 - b. Show that the respondent is liable
 - c. Show a valuation for the repair or replacement
16. Firstly, with regard to the cleaning of the unit, the landlords have failed to substantiate that the unit even required any cleaning by failing to provide the other party and the tribunal with photos of the property. As such, any claim for cleaning labor fails.
17. The success of the claim for snow clearing is determinant if the tenant is found liable for the responsibility of the property for the month of January. The tenant has indicated that she was out of town in December 2020 and that during her absence, the landlords locked her from the unit. The tenant testified at that point the landlords unlawfully took possession of the unit and thereby terminated the tenancy.
18. To this, landlord2 indicated that indeed the locks were changed as the landlords felt unsafe. The landlords also indicated that if the tenant had asked for entry, they would have opened the doors.
19. It is the opinion of this tribunal that the landlords without notice, altered the locking mechanism of the rented premises in December 2020 thereby adversely regaining possession of the unit and effectively terminating the tenancy. The snow fall evidence and photos presented by the landlords were from the month of January 2021. During this time the tenant was not in possession of the unit and, therefore, not responsible for the snow shoveling. As such, I find that the landlords' claim for snow shoveling fails.

20. As the landlords have not substantiated the cleaning or shoveling claim, the claim for damages fails.

Decision

21. The landlords' claim for damages fails.

Issue 2: Rent Owning - \$2775.00

Relevant Submissions

Landlord Position

22. The landlords testified that they are seeking **\$2775.00** as rent owed as follows:

a. Rent for December 2020	\$925.00
b. Rent for January 2021	925.00
c. Rent for February 2021	<u>925.00</u>
d. Total Claimed	<u>\$2775.00</u>

23. Landlord1 testified that the tenant was always good at paying the rent. He indicated that there was a roommate that the tenant brought into the unit. Landlord1 testified that the tenant left for [REDACTED] and rent for December 2020 was never paid.

24. The landlords are also seeking rent for January as they claim that the tenant was responsible for the unit. In addition, the landlords are seeking rent for February 2021 as the property was left in a mess and they couldn't rent the unit.

Tenant Position

25. The tenant's position is that she feels responsible for ½ a months rent for December 2020. She acknowledges not paying her portion of Decembers rent.

Analysis

26. I have reviewed the testimony and evidence of the landlords and tenant 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 landlords actually owed by the tenant.

27. With respect to the arrears being claimed for December 2020, I agree with the landlords 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 rental agreement established

when the tenancy began. The tenant has acknowledged that rent was not paid for December 2020. There is no clear date when the landlords recovered the property other than late December 2020. As such, I find that the tenant is responsible for the full month of December in the amount of \$925.00. If the tenant had a roommate, then any amount owed by the roommate should be addressed by the tenant to small claims court.

28. As the tenant has been determined above to not be responsible for the property in January 2021, no rent is due for this period. Similarly, the landlords have failed to substantiate their claim that the property was not ready to rent because of the mess, and, therefore, the tenant cannot be held liable for the rent for February 2021.

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

a) Rent owing up to 31 December 2020	<u>\$925.00</u>
b) Total due to Landlords.....	<u>\$925.00</u>

Issue 3: Payment of Late Fees - \$150.00

Landlord Position

30. The landlords are seeking payment of late fees as a result of the tenant's failure to pay rent on time.
31. Landlord1 testified that the tenant has been in arrears since December 2020. Landlord1 indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

32. Established by undisputed fact above, the tenant was in arrears since November 2020. 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.
33. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlords.

Decision

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

Issue 4: Application/Refund of Security Deposit

Landlord Position

35. Landlord1 testified that a security deposit in the amount of \$400.00 was paid on the property on or about 31 October 2019. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.
36. Landlord1 acknowledges holding the security deposit in the amount of \$400.00.

Tenant Position

37. The tenant testified that she has no problem with the landlord retaining the security deposit against any amounts owed.

Analysis

38. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$400.00.
39. The landlords' claim has been successful as indicated above. The security deposit plus accrued interest is \$400.00 as the interest rate for 2019 – 2021 is set at 0%.
40. The security deposit is an asset of the tenant's to be held against any loss incurred by the landlords attributed to the tenancy. In this matter it has been determined that there was attributable loss and as such, the landlords are entitled to offset the security deposit against a demonstrated loss as outlined in the attached order.

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41. As the landlords' claim above has been successful, the landlords shall offset the security deposit as outlined in the attached order.

