

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0070-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:00 am** on **09 April 2021** and at **11:00 am** on **23 April 2021** 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 1st applicant, [REDACTED] hereafter referred to as tenant1, participated in the hearing. (*Affirmed*).
3. The 1st applicant, [REDACTED] hereafter referred to as tenant2, participated in the hearing. (*Affirmed*).
4. The 1st respondent, [REDACTED] hereafter referred to as the landlord, participated in the hearing (*Affirmed*) and was represented by [REDACTED].
5. The details of the claim were presented as a verbal monthly agreement with rent set at \$1200.00 per month, POU, and due on the 1st of each month. Both parties acknowledged that there was a permitted reduction in rent to \$950.00 for the months of December – February each year. There was no security deposit collected on the tenancy.
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 application was AMENDED at the onset of the hearing by the tribunal to remove the tenants request for repairs and rent paid in trust from the application [REDACTED]. This was removed as it was learned that the tenants were in arrears at the time of the application. As per policy 4(2) Tenant Request for Repairs, the tenants rent was not paid up to date and therefore an application cannot be adjudicated.
8. The affidavit submitted by the tenants show that the landlord was served with the notice of this hearing on the **29 March 2021** by serving the original documents to the landlord via email at the address: [REDACTED] and attaching the verification of same.
9. The affidavit submitted by the landlord shows that the tenants were served with the notice of this hearing on the **07 April 2021** by serving the original documents to the tenant via personal service at the rented premises. This was not within the 10 days required by policy for the hearing to proceed, however, the tenants waived their rights of service and agreed to proceed with the claims.

Issues before the Tribunal

10. The tenants are seeking the following:
 - a) Validity of Notice;
 - b) Refund of Rent Paid; **\$101,000.00**;
 - c) Compensation of Inconvenience; **\$28,639.27**
 - d) Refund of Utilities; **\$23,585.83**
11. The landlord is seeking the following:
 - e) Compensation for Inconvenience; **\$18,671.73**;
 - f) Late Fees; **\$75.00**
 - g) Vacant possession of the rented premises;
 - h) Hearing expenses; **\$45.00**

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;
- a. Sections 19, 34 and 35 of *the Act*; and;
 - b. Policy 3-2: *Notice to Enter*;
 - c. Policy 4-2: *Tenant Request for Repairs*;
 - d. Policy 8-5: *Order of Possession*;
 - e. Policy 8-8: *Order of Director*;
 - f. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Validity of Notice/Vacant Possession

Relevant Submissions

Landlord Position

14. It is the landlord's position that the tenants have failed to pay rent and were served a termination notice (**Exhibit L # 2(G)**) on 23 October 2020 by posting the notice on the front door of the rented premises. The intended termination date was set for 04 November 2020 under section 19 of the *Residential Tenancies Act, 2018*.
15. The landlord testified that there has been a long history of the tenants not paying rent on time and the issuance of several notices for non-payment of rent over the tenancy as indicated:
- a. Termination Notice 16 Feb 2017 (Sec 18): **Exhibit L # 2A**
 - b. Termination Notice 10 June 2018 (Sec 18): **Exhibit L # 2B**
 - c. Termination Notice 7 Jan 2019 (Sec 18): **Exhibit L # 2C**
 - d. Termination Notice 17 May 2019 (Sec 19): **Exhibit L # 2D**
 - e. Termination Notice 15 July 2019 (No section stated): **Exhibit L # 2E**
 - f. Termination Notice 02 April 2020 (Sec 19): **Exhibit L # 2F**
 - g. Termination Notice 23 October 2020 (Sec 19): **Exhibit L # 2G**
16. The landlord testified that immediately prior to the termination notice being issued, the tenants were owing rent for part of September and all of October 2020. He further added that before the notice was to expire, the tenants rent for November 2020 also became due and payable.
17. The landlord added that no late fees were paid by the tenants on this outstanding rent.
18. The landlord testified that rent was historically paid by the tenants via cash directly to the landlord at his residence or on a few occasions when he was out of the country, to his neighbor. He further added that in November he received rent payments from his law firm [REDACTED] that was

deposited into the law firms trust account. The landlord testified that he received the funds from the firm as follows:

- a. \$2150.00 paid from the Law Firm on 02 November 2020: **Exhibit L # 2H**
- b. \$250.00 paid from the Law Firm on 06 November 2020: **Exhibit L # 2I**

19. It is the landlord's position that the owner of the property is [REDACTED] and not the separate legal entity [REDACTED]. He indicates that payment of rent to the firm do not constitute payment to the owner of the property. He indicates that he did not receive the funds until 06 November 2020, two days after the termination notice expired. He further added that the tenants also failed to pay late fees under section 15 of *the Act, 2018* and thereby making the termination notice valid.
20. The landlord is seeking an order of vacant possession of the property where 2 adults are living in the unit located at [REDACTED].

Tenant Position

21. It is the tenants' position that they were behind in rent as indicated by the landlord above. They further indicated that the landlord provided the trust account info for the payment of rent in September 2020 and they paid the rent there. They stated that in November when they paid their rent payments, they used the same trust account information and made the deposits.
22. They contend that they paid the rent in full before the expiration of the termination notice and thereby voided the notice as per section 19(2) of the *Residential Tenancies Act, 2018*.
23. Further, to the claim of the landlord that no late fees were paid, the tenants indicate that there was never any discussion of any late fees required through the entire tenancy and, therefore they would not have reasonably known that any were required at this point.
24. It is the tenant's opinion that the termination notice issued on 23 October 2020 for the termination date of 04 November 2020 is void and of no effect as the arrears were paid in full.

Analysis

25. I have reviewed the testimony and evidence of the landlord and tenants in this matter. Upon examination of the claim and evidence, it is apparent that there are several questions to be answered in determining the validity of the termination notice and the issuance of a vacant possession order. The issues are:

- a. Was rent owed by the tenants at the time of the issuance of the termination notice;
 - b. Was rent paid in full prior to the expiration of the notice;
 - c. Is a payment to the law firm where the landlord is a partner valid;
 - d. Are late fees applicable in this matter;
26. The validity of the termination notice issued by the landlord in this matter hinges on several questions covering multiple sections of the *Residential Tenancies Act, 2018*.
27. On the question of rent being owed, both parties have acknowledged and testified that rent was indeed owed by the tenants on the day the landlord issued the termination notice itemized as **Exhibit L # 2(G)**. This tribunal is satisfied with the testimony of both sides that rent was owed. This leads into the next question, that being was late fees applicable?
28. Section 2(g) defines "Rent" as:

2. In this Act

(g) "rent" means money or other value paid, or required to be paid under a rental agreement, by a tenant to a landlord before or during the use or occupancy of a residential premises for the use or occupation of the residential premises and includes

- (i) an amount payable for the use of furniture contained in the residential premises,*
- (ii) an amount payable for the cost of utilities,*
- (iii) a fee assessed under section 15, and*
- (iv) a payment made to a landlord on the sale of a mobile home including*
 - (A) a payment for the right to use or occupy the land, and*
 - (B) a fee charged to connect a mobile home to a service or a facility;*

29. Section 15 outlines the fees permitted under the *Residential Tenancies Act, 2018* where there is a failure to pay rent during a tenancy:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

(2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

30. The tenants have acknowledged that they did not pay any late fees for the late period of rent. The tenants claim that they had no idea that the landlord was charging a late fee as it has never been charged before in the tenancy. This is seemingly a valid point and certainly reasonably fair especially as the landlord was using that lack of payment of the late fees to preemptively validate the notice of termination.

31. There is no indication that the landlord has ever charged a late fee to the tenants when they have been late on rent. Section 15 does permit the landlord to charge a late fee as set out by the minister.

32. One of the principals of Natural Justice is the requirement of notice. This is there to ensure a fair proceeding. Given that section 15(1) provides that:

*“.....a landlord **may** charge the tenant a late payment fee.....”*

The use of the word “*may*” indicates that it is not certainly definitive that the landlord has too or is required to assess the late fee. It then leaves some question if it will happen. To clear up any ambiguity and ensure a fair proceeding, notice would be required to ensure that each party is aware of what is required. There is no specific indication of a formal notice in this section, but indication that at least an informal notification that a late fee was applicable would be required. There was no evidence led to suggest that even an informal notification of an assessment of a late fee was provided.

33. On the question of payment of the rent, the landlord contends that the rent owing was not fully paid prior to the expiration of the termination notice and as such, the termination notice would not be considered null and void.

34. The landlords’ evidence is that the payment for the rental arrears were made to a law firm for which he is a partner. This is a legal commercial entity in and of itself and has no legal title to the rental property in question. The landlord indicated that the rental property is owned as a personal asset separate from the law firm. He indicated that he received the following payments from the firm for rents that were deposited into the firms trust account:

- a. \$2150.00 paid from the Law Firm on 02 November 2020
- b. \$250.00 paid from the Law Firm on 06 November 2020

35. Both parties have indicated that the normal method of rental payment has been cash delivered to the landlord’s home or neighbor (as directed when he is out of town). It was the tenants’ statement that in September 2020, the landlord provided the deposit information to make a payment. The landlord stated that this was for a one-time payment.

36. This tribunal accepts that historically the traditional and normal method of the payment of rent to the landlord has been with cash directly to the landlord’s home or his neighbor in times when he was out of town. The deposit to a business trust account, unless that business owns the property, is risky at best. Trust accounts are regulated tightly and carefully and are designed to handle the transactions of the business in question (ie: real estate trust account or a legal trust account). This tribunal accepts that the landlord’s law firm is a separate legal entity from the landlord and should be treated as such.

37. It is clear that rent is required to be paid by the tenants to the landlord and therefore it is the responsibility of the tenants to ensure that rent is paid to the landlord on time.
38. Any rent payments made to a third party should be made such that the payments reaches the intended party on or before the day the rent is required. Making a payment then to a separate third party does not mean that the day it is paid to a third party is the day the intended party receives it. (ie: if a tenant decides to place a money order in registered mail to the landlord and said mail is not received until 10 days later, rent would be considered to be in arrears or late).
39. This tribunal finds that by the tenants taking it upon themselves to deposit rent funds in a law firm trust account, they risk having the rent paid late. I find that the payments of rent in November 2020 were made to the landlord on the days indicated by the landlord once the cheques were received from the trust account, the last payment being 06 November 2020.
40. The validity of the termination notice is determined by its compliance with the notice requirements identified in Sections 19. (1)(b),(4) and Section 34 as well as the service requirements identified in Section 35.
41. The issue of rental arrears has been determined above confirming that the tenants owed rent to the landlord beyond the day of termination.
42. Section 19. (1)(b) requires that rent be overdue for 5 days or more before the landlord may give the tenant a termination notice to vacate the property not less than 10 days after the notice is served on the tenant. On examination of the termination notice issued and submitted into evidence (**Exhibit L # 2 (G)**), I find the notice was served on 23 October 2020 with a termination date of 04 November 2020. As established above and undisputed by the tenants, rent had been in arrears since 01 September 2020. As rent had been in arrears for 30 plus days, I find this is well beyond the 5 day requirement set out in the *Act*. I further find that as the date of termination identified on the notice is 10 clear days between the date the notice was issued and the date the tenants are required to move out, the termination notice is in full compliance with the requirements of Section 19. (1)(b).
43. Sections 19. (4) and 34 below identify the technical requirements of the termination notice. 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.

44. As identified above, the landlord testified that the termination notice was served by placing the notice on the front door of the rented property which is a permitted method of service identified under Section 35.
45. According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession of the property along with an order for any and all costs associated with certifying the orders or with the Sheriff to enforce such a Possession Order should the Sheriff be engaged to execute the Possession Order.

Decision

46. The landlord's claim for vacant possession succeeds. The landlord is further awarded costs associated with the certification and enforcement of the Possession Order by the High Sheriff of NL.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

47. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
48. The landlord testified that the tenants have been in arrears on an ongoing basis and as of the latest arrears since October 2020. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Landlord Position

49. The tenants claim that they have never been asked for a late fee to be paid or have never been advised that late fees would ever apply to late rent. As such, they dispute the claim of the landlord seeking the costs for any late fees.

Analysis

50. Established by undisputed fact above, the tenants were in and out of arrears throughout the tenancy since the beginning. 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.
51. However, in the interest of the principals of natural justice and to ensure a fair proceeding, there is no indication that the landlord has ever asked for or imposed any late fees upon these long term tenants. To impose such a condition without any notification seemingly at the last minute would be unreasonable and unjust. As such, I find that the landlord's claim for late fees does not succeed as the landlord has not given reasonable notice of such a charge being applied where one was never applied before or notice was never provided before.

Decision

52. The landlord's claim for late fees fails.

Issue 3: Refund of Rent - \$101,000.00 & Refund of Utilities - \$23,585.83

Tenant Position

53. The tenants' claim is seeking a refund of rent paid since the beginning of the tenancy in the amount of \$101,000.00 and a refund of utilities paid since they lost their wood furnace in December 2017 in the amount of \$23,585.83.
54. The tenants testified during the presentation of their claim, they indicated that for the utilities they are seeking only 40% of the above amount (\$9,434.33) and for the rent refund they are seeking 60% of the total claim (\$60,600.00).
55. The tenants testified that prior to November 2020, all of their communication to the landlord was verbal in nature.

Rent Refund:

56. The tenants' testified that the house has been in disrepair since they moved into the property and haven't been able to use the property. They claim the particular issues with the unit (many identified) were addressed with the landlord verbally and never repaired. The tenants did not submit any photos of the repairs as the evidence was not served to the landlord for these hearings.
57. The tenants initially stated that they were claiming for a complete refund of the 7 years rent paid on the property. They reduced that claim to 60% of the \$101,000.00.

Utilities Refund:

58. The tenants advise that the claim for utilities is similar to the claim for rent. The house was in a complete state of disrepair since they moved into the property. They testified that the house suffers from major leaks and drafts which increases the usage on electricity and in turn their costs in the property. They submitted into evidence copies of the NL Power Summaries for the accounts held on the property by the tenants during the tenancy (**Exhibit T # 2A and 3**).
59. The tenants testified that at the beginning of the tenancy there was a wood furnace in the property and the electrical costs were not so bad. They indicated that in December 2017, the wood furnace was no longer usable and they resorted to electrical heaters which increased their costs. They testified that the landlord agreed to reduce their rent by \$250.00 per month for December, January and February of each year to offset the loss of the wood furnace for heat.
60. Tenant1 testified that she operated a home based business from the property as a baker since 2014 so any change in the electricity has to be due to the increase of heating requirement due to the lack of repair.

Landlord Position

61. The landlord disputes these portions of the claim stating that he was never notified of any cause for concern related to the property other than the furnace and an agreement of compensation was reached in that regard which has been provided each year as agreed.

Rent Refund:

62. The landlord emphasized that he has already addressed the lack of the wood furnace in the property by rebating rent in the amount of \$250.00 per month for December, January and February each year since December 2017.
63. The landlord indicated that there has never been any requests for repairs outside of the furnace from the tenants and in fact he claimed that [REDACTED] indicated that everything was great when asked during rent payment days.
64. The landlord cross examination revealed that the tenants acknowledged that they did not seek any formal request for repairs only as part of this application.

Utilities Refund:

65. The landlord questioned the business of tenant1 being operated at the property and how much of the electrical usage was attributed to the business. With regard to the NL Power summaries, the landlord asked on clarification of the business portion breakdown of the summaries. The tenants acknowledged that there was

no direct request for any refund of utilities during the tenancy, only through this process and application. The landlord further emphasized that there has been a rebate compensation for the extra electrical usage resulting from the furnace, and pointed out that the tenants have acknowledged this important fact in this claim.

66. The landlord further asked about the records of sales for the business (none provided by the tenants) to assess the potential usage of the electrical services solely for the business.

Analysis

67. I will start by stating that the tenants pay rent for the “use and occupation of the rented premises” as seen in the definition of “rent” in *section 2(g)* of the *Residential Tenancies Act, 2018*. The claims of the tenants for the rebate of rent and utilities are stemming for a claim of the disrepair of the property causing a lack of use and an increased cost of heat. It is incumbent on the applicants to establish beyond the balance of probabilities that the property was in such a state of disrepair and that the respondent was negligent in their duties to ensure that the repairs were addressed by way of repairs or adequate compensation for same.
68. As a normal place to start, the presentation of evidence depicting the disrepair would be a wise choice. The tenants for some reason, failed to supply the landlord with the most important pieces of evidence, photos depicting the disrepair. Other than the statements of the tenants, there is not one piece of evidence showing the condition of the property.
69. As mentioned at the onset of this report, an order directing any repairs to be completed cannot be addressed here as the tenants were in arrears (by their own testimony) at the time of application and as per policy, an application cannot be addressed.
70. Further, the tenants have indicated that they have operated a small business from the property involving baking which can use significant electrical energy. The summaries provided by the tenants cannot be broken down or quantified respective of the business and personal usage.
71. The tenants further testified that they did not, prior to this application, formally request any compensation for the electrical usage or to have repairs completed to the landlord. The tenants insisted that they did verbally advise the landlord of repairs required.
72. Based on the evidence presented by both parties in this matter, I can find no grounds to order any compensation other than what has already been agreed upon by both parties for and refund of rent or utilities. As such, the tenants’ claim for refund of rent and utilities fails.

Decision

73. The tenant's claim for refund of rent and utilities fails.

Issue 4: Compensation for Inconvenience: Tenant - \$28,369.27 Compensation for Inconvenience: Landlord - \$18,671.73

Tenant Position (Re: Tenants' Claim)

74. The tenants' claim is seeking compensation for the loss of business income related to the lack of use of the kitchen area. The tenants calculate the loss of income for the period of August 2020 – March 2021 @ an average income of \$1500.00 per month = \$12,000.00.
75. The tenants did not submit any documentation to support the income (ie: Sales receipts, etc.).
76. Further, the tenants are claiming the balance of the claim for the rental of a storage building in [REDACTED] where they are storing their belongings. The tenants stated they were banking on transporting their belongings from the storage facility to the outbuilding on the property. They claim that the outbuilding is not in any condition to store items due to leaks and as such they were forced to keep their belongings in the storage facility. The tenants supplied a copy of a statement summary of the storage charges (**Exhibit T # 4**) totaling \$15,876.27 paid and detailed as follows:

a. Total payments made by tenants:	\$16,237.02
b. Total Credits issued to tenants:	<u>360.75</u>
c. Total payments less Credits	<u>\$15,876.27</u>

77. The total of the two portions of the tenants' claim itemized is as follows:

a. Business losses	\$12,000.00
b. Storage Costs	<u>15,876.27</u>
c. Total	<u>\$27,876.27</u>

Landlord Position (Re: Tenants' Claim)

78. The landlord disputes the tenants' claim for inconvenience. The landlord testified that there was never permission for the tenants to operate a small business from the property which under questioning from the landlord, the tenants acknowledged that there was not permission given.
79. The landlord suggested that the tenants have not presented any evidence that the garage was in disrepair. The tenants failed to present evidence to be submitted to the landlord.

80. The landlord questioned the tenants regarding requests for repairs. The tenants indicated that there was nothing put in writing prior to November 9, 2020 but indicates there was many verbal requests for repairs as all communication was verbal. The landlord denies any verbal requests for repairs were received from the tenants.

Landlord Position (Re: Landlord's Claim)

81. The landlord presented a breakdown of the claim for inconvenience (**Exhibit L # 4**) totaling \$18,671.73. The landlord described each item as follows:
- a. (1) Contractor charge to attend the property to repair roof and entry was refused. (Roof Down - \$322.00) (**Exhibit L # 4A**)
 - b. (2) Contractor charge to attend the property to repair roof and entry was refused. (\$460.00) (**Exhibit L # 4B**)
 - c. (3) Contractor invoice for Loader 3 March 2021 (\$575.00) (**No Invoice presented**)
 - d. (4) Applicant time dealing with City of St. John's (\$5750.00) (**Billed @\$365/hour from the landlord**)
 - e. (5) Applicant time to pursue City Court Case (\$5750.00) (**Billed @\$365/hour from the landlord**)
 - f. (6) Loss of use of Applicant's Car (\$287.50)
 - g. (7) Replace Windshield (\$477.23) (**Exhibit L # 4C**)
 - h. (8) Loss of use of the property (\$5050.00)
82. The landlord presented invoices from the companies involved as indicated above. He further stated that he was unable to attend to the property to make or complete any repairs as the tenants refused access to make any repairs and is seeking compensation for same.

Tenant Position (Re: Landlord's Claim)

83. The tenants dispute the claim stating they were not specifically notified when the landlord's crews were to arrive.
84. The tenants acknowledged attempting to stop the landlord from fleeing the scene of what they thought was a criminal act. The tenants acknowledged jumping on the landlord's car and breaking the windshield.

Analysis

85. I will start by addressing some wrong interpretations of the legislations from both parties. Section 10(1) 5 of the legislation specifically deals with the entry of a rented premises and what is required. It reads:

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

5. Entry of Residential Premises - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless

- (a) notice of termination of the rental agreement has been given and the entry is at a reasonable time for the purpose of showing the residential premises to a prospective tenant or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;*
- (b) the entry is made at a reasonable time and written notice of the time of the entry has been given to the tenant at least 24 hours in advance of the entry; or*
- (c) the tenant has abandoned the residential premises under section 31.*

86. I note above that notice of entry shall be in writing with a time of entry indicated except only in the case of an emergency or for the purpose of showing the property to a prospective renter or purchaser.
87. There was no indication or evidence presented that would indicate an imminent emergency or that anyone was viewing the property. As such, proper notice to enter the rented premises would be by way of a written notice to enter (for each time of entry).
88. Secondly, the landlord keeps referring to his tenants as “Squatters” in his opinion. This term is not a term used in the legislation and the tenants are exactly that “tenants” until such time as vacant possession of the property is returned to the landlord. In the Residential Tenancies administrative law forum, the tenants would be considered to be over holding their lease if they stayed beyond a termination date in a valid termination notice.
89. Regarding the landlord’s claim, landlords encounter various duties that are expected of them. Most landlords operate their rentals as a side venture to their day time career. As part of their rental operation, the landlord is expected to attend to any administrative duties related to the daily dealing of the tenants, any legal aspects of claims to Residential Tenancies and seek only fees and charges as set out by the Minister by regulation. Billing tenants at typical legal fees (in this case \$365/hour) is not one of the reasonable fees permitted. This system of dealing with disputes through the administrative tribunal was established to provide a forum that all participants can avail of a dispute process such not to tie

up the courts and costly law firms while still availing of a fair independent and none biased decision. A party is still open to engage the services of a law firm, but they do so at their own cost.

90. In consideration of the totality of the evidence, a landlord (or representative thereof) is required to provide a 24 hour written notification of entry, of entry in the rented premises to attend to repairs. No such notice was provided by the landlord and as such any refusal of entry by the tenants is within their rights. As such, no compensation is awarded for the contractor charges related to the attempted repairs or the snow clearing. Items 1 – 3 above fails.
91. The landlord's claim for time spent dealing with court cases between the landlord and the [REDACTED] are matters between the landlord and the [REDACTED]. Any associated cost for these proceedings at the Supreme Court should be addressed in that form with the presiding justice. As such, items 4 and 5 also fails.
92. Regarding the issue of the windshield of the landlord's car, this event is not a landlord and tenant matter other than it was a landlord and tenant that were involved. It has nothing to do with the tenancy, but a direct reaction of the tenants against an action happening at the moment. In the eyes of this tribunal it is a destruction or damage to private property which would be addressed more reasonably through a civil or criminal proceeding. This tribunal relinquishes jurisdiction of items 6 and 7 as they are not related to the landlord and tenant relationship and thus not within the scope of jurisdiction of this tribunal. As such, items 6 and 7 also fails.
93. Lastly, item 8 of the landlord's claim for inconvenience is the landlord's loss of use. It is evident that the landlord's notion and use of the term Squatters weighs heavily in this section of the claim. For the period of over holding, the tenants have made payments of rent which is all that can be sought for the use and occupation. Any further charges are either not permitted by the legislation or would be considered punitive in nature and not an award that would be rendered by this tribunal. It is the purpose of the tribunal to bring parties to a level playing field and award punitive damages. As such, item 8 of the claim fails.
94. In reviewing the totality of the evidence to the tenants' claim for inconvenience, I find that the tenants have not demonstrated that there was any intent for them to bring the items in storage in Nova Scotia to Newfoundland. They have further not shown that there was anything hindering them from storing their items in Newfoundland on the property. There was no evidence to support a claim that any communication was made in the years leading up to the fall of 2020. It is the tenants choice to store personal items off site and as such, the claim for storage fees fails.
95. The tenants have also claimed for al loss of business income to the tune of \$12,000.00. The tenants have not supported this claim with any such documented receipts, book keeping or any other typical records of business

transactions that would enable a reasonable calculation of business activity. As such, the tenants' claim for compensation for inconvenience fails.

Decision

96. The tenants' and landlord's claims for compensation for inconvenience fails.

Issue 5: Hearing Expenses

Landlord Position

97. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Digital Government and Service NL [REDACTED] (**Exhibit L # 5**). The landlord paid a fee for a process server [REDACTED] to serve the claim documents in the amount of \$25.00 (**Exhibit L # 6**). The landlord is seeking these costs.

Tenant Position

98. The tenants are not seeking any hearing expenses.

Analysis

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

Decision

100. The tenants shall pay the reasonable expenses of the landlord in the amount of \$45.00.

Summary of Decision

101. The landlord is entitled to the following:

- a) Hearing Expenses\$45.00
- b) Total Owning to the Landlord\$45.00**

- c) Vacant Possession of the Rented Premises

- d) Any incurred costs associated with certifying the attached orders
- e) Any incurred costs from the High Sheriff of NL associated with enforcement of the attached Possession Order

07 May 2021

Date

