

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0072-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:45 am** on **22 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 applicant, [REDACTED] hereafter referred to as landlord, participated in the hearing and was represented by [REDACTED] (Affirmed).
3. The respondent, [REDACTED] hereafter referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
4. The details of the claim were presented as a written fixed term agreement set to expire on 31 May 2021 and rent set at \$1095.00 per month with utilities extra and rent was due on the 1st of each month. A security deposit in the amount of \$821.25 was collected on or about 21 April 2020 and remains with the landlord. The landlord issued a termination notice on 10 November 2020 for the termination date of 21 November 2020 under section 19 of the *Residential Tenancies Act, 2018*.
5. 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

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 **17 March 2021** by serving the original documents to the tenant by email to the address [REDACTED] and supplying the verification of the email.

A phone call was placed to the tenant at:

[REDACTED] No answer and no room to leave a message.

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 **\$3280.00**;
 - b) Payment of late fees
 - c) Compensation for Damages **\$816.50**
 - d) Hearing expenses.
 - e) Application of the 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 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 - \$3280.00

Relevant Submissions

Landlord Position

11. The landlord stated that he had entered into a fixed term rental agreement (**Exhibit L # 1**) with the tenant which was scheduled to expire on 31 May 2021. The agreed rent is set at \$1095.00 per month and due on the 1st day of each month with a security deposit in the amount of \$821.25 collected on this tenancy on or 21 April 2020. The landlord is seeking payment for rent arrears in the amount of **\$2185.00** for the period ending 30 November 2020 (**Exhibit L # 2**).
12. The landlord is further seeking rent for December 2020 in the amount of **\$1095.00** as lost rent because they were unable to rent the property due to the condition the unit was left.
13. The landlord issued a termination notice on 10 November 2020 for the termination date of 21 November 2020 under section 19 of *The Act* (**Exhibit L # 8**).

Analysis

14. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there are 2 issues here that need to be addressed: (1) is the rent arrears that is being claimed by the landlord actually owed by the tenant, and (2) is the claim for lost future rent warranted.
15. Let me first discuss the rental arrears. The landlord's claim is for the period ending 30 November 2020 which was the last month the tenant was living at the unit. The records are clear the rental arrears had accumulated in the amount of \$2185.00 for the period ending 30 November 2020. I also can determine that the landlord terminated the tenancy for cause on the 21 November 2020 and the tenant vacated as directed.
16. Evidence of damages and abandoned items will be addressed specifically in the following sections, but the tenant did force the landlord's hand to clean up after the tenant vacated the unit. As such, I find that the landlord is entitled to the rent for the balance of November beyond the termination date. The landlord's claim for rental arrears succeeds in the amount of \$2185.00.
17. Secondly, on the issue of lost rent for December 2020, the particulars of the damages and abandoned items will be addressed below, however, the contents of that discussion enter the picture in this section as well.

18. It is clear that the tenant left personal items behind after she vacated the unit. Additionally, the property was also left unclean. It was remarkably clear to the adjudicator that the landlord in this matter did not address the tenant's abandoned personal items as required by section 32 the *Residential Tenancies Act, 2018*. Instead, the landlord seemingly without authorization immediately removed the items abandoned to the local landfill.
19. The landlord in this matter is a seasoned landlord and is keenly aware of the details of the *Residential Tenancies Act, 2018*. I would not expect these actions of this landlord. As such, the landlord's quick action to remove the items, freed up the unit for re-renting and as such, the landlord cannot be awarded for the rent for December 2020. I caution the landlord on dealing with abandoned personal items of a third party as it relates to all their tenants.
20. I find the tenant is responsible for rent for the period ending 30 November 2020 in the amount of \$2185.00.

Decision

21. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 30 November 2020 \$2185.00
 - b) Total due to Landlord..... \$2185.00**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

22. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
23. The landlord testified that the tenant has been in arrears since July 2020. The landlord indicated that they are seeking late fees be applied as per the *Residential Tenancies Regulations, 2018*.

Analysis

24. Established above, the tenant was in arrears July 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.
25. The issue of rent arrears has been determined above confirming that the tenant owes rent to the landlord. The calculated late fees would far exceed the

maximum allowable per late period. As such, the landlord's claim for late fees succeeds in the amount of \$75.00

Decision

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

Issue 3: Compensation for Damages - \$816.50

Relevant Submissions

Landlord Position

27. The landlord testified that when the property was recovered it was noticed that the following items were damaged as outlined:
- a. Cleaning required
 - b. Items removed to the landfill
28. The landlord submitted photos of the property (**Exhibit L # 4 (A – D)**), a breakdown of the damages claimed (**Exhibit L # 7**), invoice from [REDACTED] (**Exhibit L # 3**) in the amount of \$184.00, and an invoice from [REDACTED] (**Exhibit L # 5**) in the amount of \$632.50 for the removal of items left behind.
29. The landlord testified that the tenant did not maintain the property in a clean state of repair which required a commercial cleaner to thoroughly clean the unit. The landlord further added that the tenant left garbage and personal items behind that had to be discarded. There was no affidavit of abandoned property submitted into evidence by the landlord.

Analysis

30. I have reviewed the testimony and evidence of the landlord in this portion of the claim. The landlord applicant is 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
31. The landlord has demonstrated the condition of the property with photos and I accept that the tenant failed to clean the unit prior to vacating. The move out photos show an unclean apartment and many personal items left behind by the tenant. The landlord's claim for cleaning in the amount of \$184.00 succeeds.

32. The landlord failed to submit an affidavit of abandoned property into evidence. I further add that a review and search of the data base held by Residential Tenancies of abandoned property applications reveal that no such application was filed with Residential Tenancies as required by section 32.
33. It is clear that the landlord did leave the personal items at the property for 1 month after the tenant vacated as required under section 32(1) and the landlord failed to provide both Residential Tenancies and the tenant with an inventory of the items left behind. As such, there was no authorization from Residential Tenancies to dispose of the abandoned property.
34. A landlord cannot abdicate their responsibilities under the legislation (file the affidavit of abandoned property) and then seek compensation from the party to dispose of the property when disposal did not follow the procedure laid out in legislation. As such, the landlord's claim for disposal of personal property fails.

Decision

35. The landlord's claim for damages succeeds in the amount of **\$184.00**.

Issue 4: Hearing Expenses

Landlord Position

36. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 6**). The landlord is seeking this cost.

Analysis

37. 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

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

Issue 5: Application/Refund of Security Deposit

Landlord Position

39. The landlord testified that a security deposit in the amount of \$821.25 was paid on the property on or about 21 April 2020. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
40. The landlord acknowledges holding the security deposit in the amount of \$821.25.

Analysis

41. Established above, the tenant did pay a security deposit to the landlord in the amount of \$821.25.
42. The landlord's claim has been successful in part as indicated above. The security deposit plus accrued interest is \$821.25 as the interest rate for 2020 – 2021 is set at 0%.
43. As the landlord's claim is successful in part as indicated above, the claim against the security deposit being held by the landlord also succeeds. The security deposit is an asset of the tenant to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was an attributable loss and as such, the landlord shall offset the security deposit against the amount outstanding as determined in this decision and the attached order.

Decision

44. As the landlord's claim above has been successful, the landlord shall offset the security deposit as indicated in the attached order.

Summary of Decision

45. The landlord is entitled to the following:

| | | |
|-----------|--|--------------------------|
| a) | Rent Owing | \$2185.00 |
| b) | Late Fees | 75.00 |
| c) | Compensation for Damages | 184.00 |
| c) | Hearing Expenses | <u>\$20.00</u> |
| d) | Sub-total | \$2464.00 |
| e) | LESS: Security Deposit..... | <u>(\$821.25)</u> |
| f) | Total owing to the Landlord | <u>\$1642.75</u> |

07 May 2021

Date

