

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0114-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm on 12 May 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 the landlord, participated in the hearing and represented by [REDACTED] and [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 tenancy are a verbal monthly tenancy commencing 01 January 2015 with the tenant vacating on 30 November 2020. Rent was set at \$650.00 per month with utilities extra and no security deposit collected on this tenancy.
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 applicants have 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 **23 March 2021** by serving the original documents to the tenant via email to the address: [REDACTED] with proof of the email sent attached.

The tenant has had **50 days** to provide a response.

A phone call was placed to the tenant to the number on file [REDACTED] The number was not in service.

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 **\$5200.00**;
 - b) Payment of late fees **\$400.00**
 - 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:
 - i. Section 9(1) of *the Act* and;
 - ii. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.*

Issue 1: Rent Owing - \$5200.00

Relevant Submissions

Landlord Position

11. The landlord testified that the tenant was required to pay rent in the amount of \$650.00 on the first of each month as was agreed in the rental arrangement established when the tenancy began.
12. The landlord stated that the tenant in this matter had always paid the rent on time and they never had any issues with her. The landlord testified that the tenant fell into trouble in April 2020 and failed to make any rent payments since this time and vacating on or about 30 November 2020 leaving a balance of rent outstanding in the amount of \$5200.00 (**Exhibit L # 1**).

Analysis

13. 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.
14. 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 rental agreement established when the tenancy began.
15. Records are clear that rent for the period ending 30 November 2020 has not been paid leaving a balance of **\$5165.00**. As such, the tenant is responsible for rent in the amount of \$5165.00.

Decision

16. The landlord's claim for rent succeeds as follows:
 - a) Rent owing up to 30 November 2020 \$5165.00
 - b) Total due to Landlord..... \$5165.00**

Issue 2: Payment of Late Fees - \$400.00

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 on an ongoing basis since April 2020. The landlord indicated that they calculate the late fees at \$400.00 and are seeking the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

19. Established by undisputed fact above, the tenant was in arrears since April 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.
20. The issue of rental arrears has been determined 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 2: 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 [REDACTED] (**Exhibit L # 2**). 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.

Summary of Decision

25. The landlord is entitled to the following:

- a) Rent Owing\$5165.00
- b) Late Fees.....75.00
- c) Hearing Expenses20.00

- d) **Total Owing to the Landlord\$5260.00**

29 June 2021

Date

