

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0122-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **19 May 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 tenant1 did not participated in the hearing. (*Absent and Not Represented*)
5. The respondent, [REDACTED] hereafter referred to as tenant2 did not participated in the hearing. (*Absent and Not Represented*)
6. The details of the claim were presented as a written monthly agreement with rent set at \$1200.00 per month with utilities extra and rent was due on the 1st of each month. A security deposit in the amount of \$600.00 was collected on or about 16 January 2019 and remains with the landlords.
7. 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

8. The tenants, [REDACTED] were 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 landlords show that tenant1 and tenant 2 were served with the notice of this hearing on the **05 May 2021** by serving the original documents to the tenants via email to the address: [REDACTED] with proof of the email sent attached.

The tenants have had **13 days** to provide a response.

A phone call was placed to the tenants to the number on file [REDACTED]. There was no answer and a message was left.

9. As the tenants were properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicants, I proceeded in the tenants' absence.
10. The landlords amended the application to reflect the legal first names of the landlords to be [REDACTED]

Issues before the Tribunal

11. The landlords are seeking the following:
 - a) Rent Owing **\$2150.00**;
 - b) Hearing Expenses;
 - c) Application of Security Deposit

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. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;

Issue 1: Rent Owing - \$2150.00

Relevant Submissions

Landlord Position

14. Landlord1 testified that they are seeking **\$2150.00** as rent owed for the period of up to 30 June 2021.
15. Landlord1 testified that the tenants fell behind in rent as demonstrated by the rental records (**Exhibit L # 2**). The landlords further testified that the tenants issued a termination notice to the landlords in May 2021 terminating the tenancy on 30 April 2021 under no specific section of the RTA, 2018. The landlords indicated that the tenants vacated as indicated on 30 June 2021.

Analysis

16. I have reviewed the testimony and evidence of the landlords 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 tenants.
17. With respect to the arrears being claimed, I agree with the landlords that rent is owed as demonstrated in the following table.

Table # 1: Extractions from Rental Records

	Bal. Forward from 2019	\$ -	\$ -	(\$50.00)
1-Jan-20	Rent Due	\$ 1,200.00		(\$1,250.00)
2-Jan-20	Rent Payment		\$ 600.00	(\$650.00)
29-Jan-20	Rent Payment		\$ 600.00	(\$50.00)
1-Feb-20	Rent Due	\$ 1,200.00		(\$1,250.00)
3-Feb-20	Rent Payment		\$ 400.00	(\$850.00)
26-Feb-20	Rent Payment		\$ 560.00	(\$290.00)
28-Feb-20	Rent Payment		\$ 640.00	\$350.00
1-Mar-20	Rent Due	\$ 1,200.00		(\$850.00)
1-Apr-20	Rent Due	\$ 1,200.00		(\$2,050.00)
1-Apr-20	Rent Payment		\$ 600.00	(\$1,450.00)
2-Apr-20	Rent Payment		\$ 100.00	(\$1,350.00)
9-Apr-20	Rent Payment		\$ 100.00	(\$1,250.00)
17-Apr-20	Rent Payment		\$ 100.00	(\$1,150.00)
1-May-20	Rent Due	\$ 1,200.00		(\$2,350.00)
1-May-20	Rent Payment		\$ 600.00	(\$1,750.00)
1-May-20	Rent Payment		\$ 600.00	(\$1,150.00)
8-May-20	Rent Payment		\$ 100.00	(\$1,050.00)
1-Jun-21	Rent Due	\$ 1,200.00		(\$2,250.00)

18. Rent is required to be paid by the tenants 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 rent for the period ending 30 June 2021 has not been paid leaving a balance owing in the amount of **\$2250.00**. The landlords have only claimed \$2150.00, therefore only \$2150 will be awarded.

Decision

19. The landlords' total claim for rent succeeds as follows:
- a) Rent owing up to 30 June 2020 \$2150.00
 - b) Total due to Landlords..... \$2150.00**

Issue 2: Application/Refund of Security Deposit

Landlord Position

20. Landlord1 testified that a security deposit in the amount of \$600.00 was paid on the property on or about 16 January 2019. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.
21. Landlord1 acknowledges holding the security deposit in the amount of \$600.00.

Analysis

22. Established by undisputed fact above, the tenants did pay a security deposit to the landlords in the amount of \$600.00.
23. The landlords' claim has been successful as indicated above. The security deposit plus accrued interest is \$600.00 as the interest rate for 2019 – 2021 is set at 0%.
24. The security deposit is an asset of the tenants 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.

Decision

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

Issue 3: Hearing Expenses

Landlord Position

26. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 3**). The landlords are seeking this cost.

Analysis

27. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlords 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 the reasonable expenses.

Decision

28. The tenants shall pay the reasonable expenses of the landlords in the amount of \$20.00.

Summary of Decision

29. The landlords are entitled to the following:

a)	Rent Owing	\$2150.00
b)	Hearing Expenses	<u>20.00</u>
c)	Subtotal	\$2170.00
d)	LESS: Security Deposit	<u>(\$600.00)</u>
e)	Total owing to Landlords	<u>\$1570.00</u>

29 June 2021

Date

