

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0129-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **9:30 am** on **19 April 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 fixed term agreement set to expire on 01 June 2021 and rent set at \$1700.00 per month with utilities extra and rent was due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$1000.00 was collected on or about 25 April 2020 and remains with the landlord.
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 **06 April 2021** by serving the original documents to the tenant by email to the address [REDACTED] and supplying the verification of the email.
8. The tenant filed a counter application [REDACTED] seeking the validity of a termination notice, but moved from the unit and as such the determination of the validity was no longer required and the claim was discontinued.

## Issues before the Tribunal

9. The landlords are seeking the following:
  - a) Rent Owing **\$1645.00**;
  - b) Hearing Expenses;
  - c) Application of Security Deposit

## Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. 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 - \$1645.00

### Relevant Submissions

#### Landlord Position

12. Landlord1 testified that they are seeking **\$1645.00** as rent owed for the period of up to 18 April 2021.
13. Landlord1 testified that the tenant fell behind in rent as demonstrated by the rental records (**Exhibit L # 1**). The landlords further testified that they issued a termination notice to the tenant on 22 March 2021 terminating the tenancy on 18 April 2021 under section 19 of the RTA, 2018 (**Exhibit L # 4**). The landlords indicated that the tenant vacated as required on 18 April 2021.

14. The landlords have indicated that the amount of rent calculated was monthly rent divided by 31 days multiplied by the number of days occupied.

Tenant Position

15. The tenant testified that he does owe the rent claimed by the landlord and he did vacate the property on 18 April 2021. The tenant has no dispute with this portion of the claim.

**Analysis**

16. 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.

17. With respect to the arrears being claimed, I agree with the landlords and tenant 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 written rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 March 2021 has not been paid leaving a balance owing in the amount of **\$625.00**.

18. Rent for the month of April can only be awarded up to the date the tenant vacates (18 April 2021) and is calculated as  $(\$1700.00 \times 12 \text{ months} = \$20,400.00 \div 365 \text{ days} = \$55.89 \text{ per day} \times 18 \text{ days} = \$1006.02)$ . The calculation of the rent owing is based on annual rent and not monthly rent divided by 31 days as the landlord has indicated. Rent owing for April 1 – 18, 2021 is **\$1006.02**.

**Decision**

19. The landlords’ total claim for rent succeeds as follows:

- a) Rent owing up to 31 March 2021 ..... \$625.00
- b) Rent owing for April 1 – 18, 2021 ..... 1006.02
- c) Total due to Landlords..... \$1631.02**

**Issue 2: Application/Refund of Security Deposit**

Landlord Position

20. Landlord1 testified that a security deposit in the amount of \$1000.00 was paid on the property on or about 25 April 2020. 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 \$1000.00.

#### Tenant Position

22. The tenant testified that he is fine with the landlords retaining the security deposit in lieu of the rent owing.

#### **Analysis**

23. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$1000.00.
24. The landlords' claim has been successful as indicated above. The security deposit plus accrued interest is \$1000.00 as the interest rate for 2020 – 2021 is set at 0%.
25. 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.

#### **Decision**

26. 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

27. 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 # 2**). The landlords are seeking this cost.

#### **Analysis**

28. 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 tenant is responsible to cover the reasonable expenses.

**Decision**

29. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

**Summary of Decision**

30. The landlords are entitled to the following:

|    |                                       |                           |
|----|---------------------------------------|---------------------------|
| a) | Rent Owing .....                      | \$1631.02                 |
| b) | Hearing Expenses .....                | <u>20.00</u>              |
| c) | <b>Subtotal</b> .....                 | <b>\$1651.02</b>          |
| d) | <b>LESS: Security Deposit</b> .....   | <b><u>(\$1000.00)</u></b> |
| e) | <b>Total owing to Landlords</b> ..... | <b><u>\$651.02</u></b>    |

23 April 2021

**Date**

