

## Residential Tenancies Tribunal

Decision 19-0045-03

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 9:30 am on 10 June 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing (*Sworn*).
3. The respondent, [REDACTED], hereafter referred to as the tenant did not participate in the hearing.
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$850.00 per month (utilities not included) and due on the 1<sup>st</sup> of each month. It was stated that a security deposit in the amount of \$425.00 was collected on the tenancy on or about 29 August 2018. The landlord issued a termination notice dated 15 March 2019 for the intended termination date of 30 April 2019 via Face Book with no specific Section of the *Residential Tenancies Act, 2018* indicated.
5. 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

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 **13 May 2019** by serving the application for dispute resolution documents to the tenant at the electronic address:

[REDACTED]. The verification message was attached to the affidavit to solidify the service requirements.

The tenant has had **27 days** to provide a response.

The phone number on file for the tenant [REDACTED] was used to attempt contact with the tenant and was "OUT OF SERVICE".

As the tenant was properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

## Issues before the Tribunal

7. The landlord is seeking the following:
  - a) Payment of rent owing **\$425.00**
  - b) Payment of late fees **\$75.00**
  - c) Compensation for damages **\$335.23**
  - d) Application of Security Deposit
  - e) Hearing expenses

## Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. Also relevant and considered in this case are Sections 19, 34 and 35 of *the Act*; Policy 9-3: *Claims for Damages to the Rented Premises* and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

## Issue 1: Rent Owing - \$425.00

### Relevant Submissions

#### Landlord Position

10. The landlord stated that she had entered into a verbal rental agreement with the tenant, commencing 01 September 2018. The agreed rent was set at \$850.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit collected on this tenancy on or about 29 August 2018 in the amount of \$425.00. The landlord issued a termination notice on 15 March 2019 for the intended date of 30 April 2019. The landlord stated that rent was outstanding in the amount of \$425.00 for the period ending 30 April 2019 and stated as of the hearing date 10 June 2019 rent remains outstanding.
11. The landlord submitted into evidence copies of the rental records (**Exhibit L # 1**) outlining the payments and outstanding rent.

### Analysis

12. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
13. 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. Rent cannot be withheld for any reason without the direction through an order of the Residential Tenancies Division. Rent for the period ending 30 April 2019 is outstanding in the amount of **\$425.00**.

### Decision

14. The landlord's total claim for rent succeeds as follows:
  - a) Rent owing up to 30 April 2019 ..... \$425.00

## Issue 2: Payment of Late Fees - \$75.00

### Landlord Position

15. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
16. The landlord testified that the tenant has been in arrears since 1 April 2019. The landlord indicated that she is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

### Analysis

17. Established by undisputed fact above, the tenant was in arrears for the period beginning 01 April 2019. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
18. Given that the tenant has been in arrears since 1 April 2019, the calculated amount of late fees will exceed the maximum allowable of \$75.00.
19. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

### Decision

20. The landlord's claim for late fees succeeds in the amount of \$75.00 as per the regulations established under the *Residential Tenancies Act, 2018*.

## Issue 3: Compensation for Damages - \$335.23

### Relevant Submissions

#### Landlord Position

21. The landlord is claiming for plastering, painting of the living room, bedroom, kitchen and entry way plus associated labor (**Exhibit L #2**) as follows:
  - a. Materials - \$78.18
  - b. Labor - \$257.05 (13.25 Hrs X \$19.40/hr)
22. The landlord testified that after the tenant vacated the property, there were several areas noted of large holes in the drywall that required repair. The landlord submitted photos of the damages (**Exhibit L # 4**) along with receipts for the purchase of materials (**Exhibit L # 5**) to complete the repairs in the amount of \$78.18. The landlord further testified that she spent 13.25 hours completing the repairs in total with the specifics outlined on **Exhibit L # 2**.

## Analysis

23. It is evident from the pictures presented that the damages to the drywall were what would be considered beyond reasonable wear and tear. The use of wall anchors is a damage that the tenant should take reasonable care to repair prior to leaving a unit or leave an item (curtain rod, etc.) if it is attached to a wall with this anchoring system.
24. The landlord's detailed claim for labor (**Exhibit L # 2**) is well within reason for the items and areas repaired. Plastering and painting does take time to complete correctly. Further, the landlord is claiming an allowable rate of labor in the amount of \$19.40/hour for these repairs.
25. Based on the evidence and testimony presented, I find that the tenant is responsible to repair the holes in the drywall as demonstrated by the landlord including the materials and associated labor. As the damages created a situation that required the landlord to plaster multiple areas of the drywall, it goes without saying that paint would also be required and, therefore, I will not depreciate the valuation. I find that the amount being claimed by the landlord is well below what I would reasonably expect this sort of repair to cost. It is apparent that the landlord has kept the repair costs to a minimum and as such, the landlord is awarded repairs to the drywall in the amount of \$335.23 as claimed.

## Decision

26. The landlord's claim for damages succeeds in the amount of \$335.23.

## Issue 3: Hearing Expenses

### Landlord Position

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

## Analysis

28. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord is 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**

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

**Issue 4: Application of Security Deposit**

Landlord Position

30. The landlord testified that a security deposit in the amount of \$425.00 was paid on the property on or about 29 August 2018. The landlord’s claim is seeking to apply the security deposit against the order issued by the tribunal.

**Analysis**

31. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$425.00. The landlord’s claim has been successful in part. The security deposit plus accrued interest is \$425.00 as the interest rate for 2018 – 2019 is set at 0%.

**Decision**

32. As the landlord’s claim above has been successful, the landlord shall apply the security deposit being held against the attached Order as outlined in the attached.

**Summary of Decision**

33. The landlord is entitled to the following:

a)	Rent Owing (up to and including 30 April 2019).....	\$425.00
b)	Late Fees.....	75.00
c)	Damages.....	335.23
c)	Hearing Expenses.....	\$20.00
d)	<b>Total owing to Landlord.....</b>	<b>\$\$855.23</b>
e)	<b>LESS: Security Deposit.....</b>	<b>(\$425.00)</b>
f)	<b>Total Owing to Landlord.....</b>	<b><u>\$430.23</u></b>

3 February 2020

Date



Michael Greene  
Residential Tenancies Tribunal