

Residential Tenancies Tribunal

Decision 19-0062-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 18 September 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 (*affirmed*).
3. The respondent, [REDACTED], hereafter referred to as tenant1 did not participate in the hearing.
4. The respondent, [REDACTED], hereafter referred to as tenant2 did not participate in the hearing.
5. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$1300.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$650.00 was collected on the tenancy on or about 10 April 2019. The landlord issued a termination notice dated 02 July 2019 for the intended termination date of 13 July 2019 under Section 19 of the *Residential Tenancies Act, 2018*. The landlord recovered the premises on the issuance of an abandonment notice issued on 21 July 2019 and a recovery date of 22 July 2019.
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 tenants, [REDACTED] & [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 landlord show that tenant1 was served with the notice of this hearing on the **02 July 2019** by serving the application for dispute resolution document personally to tenant1 at the rental unit address.

The affidavit submitted by the landlord shows that tenant 2 was served with the notice of this hearing on the **02 July 2019** by serving the application for dispute resolution document to tenant1 who is 16 years of age or older and lives with tenant2.

Both tenants have had **41 days** to provide a response for the hearing date set for 13 August 2019.

Phone calls were placed to the listed numbers for the tenants with the following results:

- [REDACTED] – Listed as Not in Service
- [REDACTED] – No answer and no message manager
- [REDACTED] – Message left on message manager

As the tenants were 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.

8. The landlord amended the claim at the hearing to:
 - a. Remove the request for a Vacant Possession Order as the tenants vacated the property and the property was recovered through abandonment on 22 July 2019.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Payment of rent owing **\$3200.00**
 - b) Late Fees **\$75.00**
 - c) Hearing expenses

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 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 Owning - \$3200.00

Relevant Submissions

Landlord Position

12. The landlord stated that both parties had entered into a verbal rental agreement, commencing 10 April 2019. The agreed rent was set at \$1300.00 per month and due on the 1st day of each month with a security deposit in the amount of \$650.00 collected on 10 April 2019. The landlord issued a termination notice (**Exhibit L # 2**) on 02 July 2019 for the intended date of 13 July 2019 (section 19). The landlord testified that as of the termination date (13 July 2019), the tenants remained in the unit. The landlord further stated that rent was outstanding in the amount of \$3200.00 for the period ending 31 July 2019 (**Exhibit L # 1**). As of the hearing date 18 September 2019 rent remains outstanding.

Analysis

13. 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 tenants.
14. With respect to the arrears being claimed, I agree with the landlord that rent is owed. The determination of the amount of rent owed can only rest with the

records submitted. Rent is required to be paid by the tenants for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. The landlord terminated the tenancy on 13 July 2019 and legally recovered the unit through abandonment on 22 July 2019 thereby relinquishing any claim for rent beyond the recovery date. Based on the evidence provided I find that rent for the period ending 30 June 2019 is outstanding in the amount of **\$1900.00**. Rent for the period of July 1 – 22, 2019 is determined to be \$940.28 calculated as $(\$1300.00 \times 12 \text{ months} = \$15,600.00 \div 365 \text{ days} = \$42.74 \times 22 \text{ days} = \940.28 .

Decision

15. The landlord's claim for rent succeeds as follows:

a) Rent owing up to 30 June 2019.....	\$1900.00
b) Rent owing for July 1 – 22, 2019.....	<u>940.28</u>
c) Total Rent Outstanding.....	<u>2840.28</u>

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

16. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.

The landlord testified that the tenants have been in arrears since the beginning of the tenancy. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

17. Established by undisputed fact above, the tenants were in arrears for the period ending 22 July 2019. 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.

18. Given that the tenants have been in arrears since April 2019, any calculated amount of late fees will exceed the maximum allowable per late period of \$75.00.

19. The issue of rental arrears has been determined above confirming that the tenants owes rent to the landlords.

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: Hearing Expenses

Landlord Position

21. 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 # 4**). The landlord is seeking this expense.

Analysis

22. 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 tenants are responsible to cover these reasonable expenses.

Decision

23. The tenants shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Issue 4: Application of Security Deposit

Landlord Position

24. The landlord testified that a security deposit in the amount of \$650.00 was paid on the property on or about 10 April 2019. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Analysis

25. Established by undisputed facts above, the tenant did pay a security deposit to the landlord in the amount of \$650.00. The landlord's claim has been successful and the tenants owe the landlord for rent, late fees and hearing expenses. The interest rate set out by the Minister on security deposits for 2019 is set at 0%.

The security deposit plus accrued interest then is \$650.00.

Decision

26. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held against any amount outstanding as directed in the attached order.

Summary of Decision

27. The landlord is entitled to the following:

a)	Rent Owing (up to and including 22 July 2019)	\$2840.28
b)	Late Fees.....	75.00
b)	Hearing Expenses	<u>\$20.00</u>
c)	Sub-total	<u>\$2935.28</u>
d)	LESS: Security Deposit	<u>(\$650.00)</u>
e)	Total owing to Landlord.....	<u>\$2285.28</u>

19 December 2019

Date



Michael Greene
Residential Tenancies Tribunal