

Residential Tenancies Tribunal

Decision 19-0070-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 19 October 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Conferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing (*affirmed*).
3. The respondent, [REDACTED], hereafter referred to as tenant1, participated in the hearing (*affirmed*).
4. The respondent, [REDACTED], hereafter referred to as tenant2 did not participate in the hearing. (Absent and not represented)
5. The details of the claim were presented as a fixed term written rental agreement with rent set at \$1280.00 per month and due on the 1st of each month and subsequently changed to the 28th of each month by way of mutual consent of both parties. It was stated that a security deposit in the amount of \$900.00 was collected on the tenancy on or about 27 August 2017. The landlord issued a termination notice dated 18 June 2019 for the intended termination date of 28 June 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
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. Tenant2, [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 tenant2 was served with the notice of this hearing on the **28 September 2019** by serving the application for dispute resolution document to the email address: [REDACTED]. Supporting documents were attached to the affidavit supporting service.

The affidavit submitted by the landlord shows that tenant1 was served with the notice of this hearing on the **28 September 2019** by serving the application for dispute resolution document to the email address: [REDACTED]. Supporting documents were attached to the affidavit supporting service.

Both tenants have had **10 days** to provide a response.

Tenant2 was not available for the hearing as indicated by tenant1 who appeared via teleconference.

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 applicants, I proceeded with the hearing.

8. Tenant1 amended the claim at the hearing to:
 - a. Change the spelling of the last name of tenant1 to read "[REDACTED]".

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Payment of rent owing **\$3370.00**
 - b) 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 Owing - \$3370.00

Relevant Submissions

Landlord Position

12. The landlord stated that both parties had entered into a written fixed term rental agreement, commencing 01 September 2017 and expired on 31 August 2019 (24 months). The agreed rent was set at \$1280.00 per month and due on the 1st day of each month with a security deposit in the amount of \$900.00 collected on 27 August 2017. The landlord issued a termination notice on 18 June 2019 for the intended date of 28 June 2019 (section 19) via text/email. The landlord testified that the tenants vacated the unit on 30 June 2019 and the property was re-rented on or about 16 July 2019. The landlord stated that rent was outstanding in the amount of \$3370.00 for the period ending 30 June 2019 (**Exhibit L # 1**) and submitted rental records to support the claim. The landlord stated as of the hearing date 09 October 2019 rent remains outstanding.

Tenant Position

13. Tenant1 testified that she paid the rent for the months of June and August 2018 (\$2560.00) by depositing the cash into the landlord's account. Tenant1 doesn't dispute the other amount owing, **\$810.00** (\$3370.00 - \$2560.00). Tenant1 did not provide any deposit receipts for the payments alleged for June and August 2018.

Analysis

14. I have reviewed the testimony and evidence of the landlord and tenant 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.

15. 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 from both parties. 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 presented a series of rental records for the tenancy that clearly outlines the payments from the tenants and establishes a balance owing. Tenant1 makes a statement that two payments were made in cash, but did not support the statement with receipts for the deposits. I do not accept tenant1's statement that payments were made to the account. Based on the evidence from both parties provided, I find that rent for the period ending 30 June 2019 is outstanding in the amount of **\$3370.00** as claimed by the landlord and supported in rental record documents.

Decision

16. The landlord's total claim for rent succeeds as follows:
- a) Rent owing up to 30 June 2019..... \$3370.00
 - b) Total arrears..... **\$3370.00**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

17. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
18. The landlord testified that the tenants have been in arrears since the beginning of the tenancy 01 Sept 2017. The landlord indicated that they are seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Tenant Position

19. Tenant1 acknowledged the late rent and understood the request for late fees from the landlord.

Analysis

20. Established by undisputed fact above, the tenants were in arrears for the period ending 30 June 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.

21. Given that the tenants have been in arrears since 01 September 2017, any calculated amount of late fees will exceed the maximum allowable per late period of \$75.00.
22. The issue of rental arrears has been determined above confirming that the tenants owes rent to the landlord.

Decision

23. 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

24. 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 # 3**). The landlord further paid a fee in the amount of \$25.00 for the services of a Commissioner for Oaths.

Tenant Position

25. Tenant1 was clear on the request for hearing expenses from the landlord.

Analysis

26. 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*. However, the landlord has failed to support the payment of the fee for a Commissioner for Oaths with a receipt and as a result this fee will not be considered. As such, I find the tenants are responsible to cover these reasonable expenses of the landlord for the application filing fee of \$20.00.

Decision

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

Issue 4: Application of Security Deposit

Landlord Position

28. The landlord testified that a security deposit in the amount of \$900.00 was paid on the property on or about 27 August 2017. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Tenant Position

29. Tenant1 agreed to allow the landlord to retain the security deposit.

Analysis

30. Established by undisputed facts above, the tenants did pay a security deposit to the landlord in the amount of \$900.00. 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 2017 - 2019 is set at 0%. The security deposit plus accrued interest then is \$900.00.

Decision

31. 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.

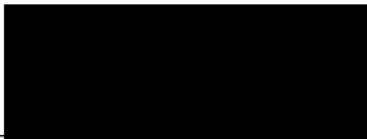
Summary of Decision

32. The landlord is entitled to the following:

a)	Rent Owing (up to and including 30 June 2019).....	\$3370.00
b)	Late Fees.....	75.00
c)	Hearing Expenses	\$20.00
d)	Sub-total	\$3465.00
e)	LESS: Security Deposit	(\$900.00)
f)	Total Owing to Landlord	<u>\$2565.00</u>

11 February 2020

Date


Michael Greene
Residential Tenancies Tribunal