

Residential Tenancies Tribunal

Decision 19-0077-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 07 November 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The landlord, [REDACTED], hereafter referred to as landlord participated in the hearing (*Affirmed*).
3. The tenant, [REDACTED], hereafter referred to as tenant1, did not participate in the hearing.
4. The tenant, [REDACTED], hereafter referred to as tenant2, did not participate in the hearing.
5. The details of the claim were presented as a written term rental agreement expired on 30 April 2019 with rent set at \$1100.00 per month and due on the 1st of each month. It was stated that no security deposit was collected on this tenancy. The landlord issued two (2) termination notices:
 - a. The first dated 23 May 2019 for the intended termination date of 31 August 2019 under section 18 of the legislation indicated. (No cause)
 - b. The second dated 07 June 2019 for the intended termination date of 19 June 2019 under section 19 of the legislation indicated (Non-payment of rent)
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 shows that tenant1, [REDACTED], was served with the notice of this hearing on the **19 October 2019** by serving the documents to [REDACTED] personally at [REDACTED] and the tenant has had **18 days** to provide a response.

The affidavit submitted by the landlord shows that tenant2, [REDACTED], was served with the notice of this hearing on the **19 October 2019** by serving the documents to [REDACTED] personally at [REDACTED] and the tenant has had **18 days** to provide a response.

The contact information on file for the tenants was contacted prior to the hearing commencing as a last effort to provide the tenants an opportunity to attend. The following were the results:

- a. [REDACTED]: NOT IN SERVICE
 - b. [REDACTED]: IN THE NAME OF ANOTHER PERSON NOT THAT OF THE TENANTS.
8. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenants' absence.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Payment of rent owing **\$1100.00**;
 - b) Payment of Utilities **\$13.05**;
 - 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:
 - a. Sections 34 and 35 of *the Act*; and
 - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
 - c. *Policy 9-2 Claims and Counter Claims*;

Issue 1: Rent Owing - \$1100.00

Relevant Submissions

Landlord Position

12. The landlord stated that they had entered into a rental agreement with the tenants, commencing 01 May 2018. The agreed rent was set at \$1100.00 per month and due on the 1st day of each month with no security deposit collected on this tenancy. The landlord issued two (2) termination notices (**Exhibit L # 1 & 2**) on 23 May 2019 for the intended date of 31 August 2019 and 07 June 2019 for the intended date of 19 June 2019 respectively. The landlord stated that the tenants vacated the property on or about 19 June 2019. The landlord further stated that no rent was received from the tenants for June 2019 with the balance outstanding being \$1100.00 up to and including 30 June 2019. The landlord additionally stated that as of the hearing date 07 November 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, the landlord has failed to provide actual rental records but has supplied a series of emails to the tenants requesting rent. I agree with the landlord that rent is owed. 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. It is clear that rent for June 2019 came due on the first of each month and was never paid.

15. It was also clear that the landlord terminated the tenancy by way of notice (**Exhibit L # 2**) for non-payment of rent on 19 June 2019 and the tenants vacated on that notice. As such, the landlord is only entitled to rent up to and including the date the tenants vacated (19 June 2019) in the amount of **\$687.04** calculated as *(\$1100.00 X 12 mths = \$13,200.00 ÷ 365 days = \$36.16 per day X 19 days = \$687.04)*. I find that based on the testimony and evidence provided, the tenants owe rent in the amount of **\$687.04** covering the period 01 June 2019 to 19 June 2019.

Decision

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

a) Rent owing up to 19 June 2019.....	<u>\$687.04</u>
b) Total Arrears	<u>\$687.04</u>

Issue 2: Utilities (Oil) - \$600.00

Relevant Submissions

Landlord Position

17. The landlord testified that the tenants failed to fill the oil tank prior to them departing the residence as required by the rental agreement (**Exhibit L # 3**). The landlord indicated that the oil tank was changed (May 2019) during the tenancy as there was no oil in the tank at that time. At that point oil was put in the tank (**Exhibit L # 4**) in the amount of \$250.23.
18. The landlord testified that prior to the new tenants moving in for 01 August 2019, she had an additional amount of oil placed in the tank (\$226.99) which brought the level to ½ full for the new tenants. The landlord stated that the respondents to this application did not fill the tank upon departure or compensate the landlord for the oil used.
19. The landlord provided a summary of transactions from the account (**Exhibit L # 4**).

Analysis

20. 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 utilities that is being claimed (oil expenses) by the landlord actually owed by the tenants.

21. With respect to the utilities being claimed, I agree with the landlord that this charge is the responsibility of the tenants. The cost of heating the rented property is that of the tenants' responsibility for the period of use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. I accept the evidence of the landlord as being reasonable that the tenants utilized the oil in the tank during the tenancy and failed to replace the oil upon departure from the premises. The oil tank was replaced just three weeks before the tenants vacated as there was no oil in the tank at the time. The landlord had approximately $\frac{1}{4}$ of a tank placed in the new tank at the end of May 2019 and dropped an additional $\frac{1}{4}$ of a tank at the end of July 2019 to bring it to $\frac{1}{2}$ tank. This is clear and reasonable given the time of year that very little fuel was used and that the only oil placed in the tank was that which the landlord placed there. I find that based on the records provided, the tenants owe oil expenses in the amount of **\$600.00** as claimed. The actual approximate cost of a full tank of oil is ($\$226.99 + 250.23 = \$477.22 \times 2 = \$954.44$) but as the landlord has only claimed \$600.00, that is the maximum award to be issued.

Decision

22. The landlord's claim for oil expenses succeeds in the amount of \$600.00.

Issue 3: Hearing Expenses

Landlord Position

23. 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 # 5**). The landlord is seeking this cost.

Analysis

24. 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*. As such, I find the tenants are responsible to cover these reasonable expenses.

Decision

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

Summary of Decision

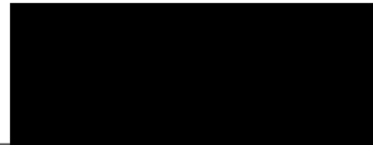
26. The landlord is entitled to the following:

- a) Rent Owing\$687.04
- b) Utilities600.00
- c) Hearing Expenses \$20.00

- d) **Total owing to Landlord****\$1307.04**

06 March 2020

Date



Michael Greene
Residential Tenancies Tribunal