

Residential Tenancies Tribunal

Decision 19-0105-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **10:30 am** on **26 October 2020** 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 the landlord, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant did not participate in the hearing. (*Absent and Not Represented*)
4. The details of the claim were presented as a written fixed term rental agreement with rent set at \$750.00 with utilities included and set to expire on 31 August 2020. Rent was due on the 1st of each month. There was a security deposit in the amount of \$300.00 collected on 20 August 2019. There was no termination notice issued on the tenancy.
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 **15 October 2020** by serving the application for dispute resolution document to the tenant by email:

[REDACTED] and providing a copy of the email sent. The tenant has had **10 days** to provide a response

Contact was made to the tenant at the phone number on file [REDACTED]. The tenant answered and advised he was in [REDACTED] working and not available.

Prior to the hearing there was no request made for any continuance.

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.

7. The landlord amended his legal name to be [REDACTED].

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$1100.00**
 - b) Late Fees **\$75.00**
 - c) Cleaning **\$38.80**
 - d) Hearing expenses

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. 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 - \$1100.00

Relevant Submissions

Landlord Position

11. The landlord stated that both parties had entered into a verbal rental agreement, commencing 01 September 2019. The agreed rent was set at \$750.00 utilities included per month and due on the 1st day of each month with a security deposit in the amount of \$300.00 collected. There was no termination notice issued on the tenancy. The landlord further submitted a copy of the rental agreement (**Exhibit L # 2**) establishing the fixed term rental agreement.
12. The landlord testified that rent was outstanding in the amount of **\$1100.00** for the period ending 31 December 2019 (**Exhibit L # 1**). The landlord stated as of the hearing date 26 October 2020 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/fees that is being claimed by the landlord actually owed by the tenant.
14. With respect to the arrears being claimed, I agree with the landlord that rent is owed by the tenant. The determination of the amount of rent owed can only rest with the records submitted into evidence. 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. Based on the evidence provided I find that rent for the period ending 31 December 2019 is outstanding in the amount of **\$1100.00**.

Decision

15. The landlord's claim for rent succeeds as follows:
 - a) Rent owing up to 31 December 2019..... \$1100.00

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

16. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
17. The landlord testified that the tenant has 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

18. Established by undisputed fact above, the tenant was in arrears for the period ending 31 December 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.
19. Given that the tenant have been in arrears since 01 September 2019, any calculated amount of late fees will exceed the maximum allowable per late period of \$75.00.
20. The issue of rental arrears has been determined above confirming that the tenant owes rent/fees to the landlord.

Decision

21. 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: Cleaning - \$38.80

Landlord Position

22. The landlord is seeking costs associated with the cleaning the property once the tenant vacated.
23. The landlord testified that the unit was left in a deplorable condition that required many hours of cleaning. The landlord testified that he is claiming \$38.80 for 2 hours labor at a rate of \$19.40 per hour for the time spent cleaning. He stated that there were many more hours spent but he is only claiming for 2 hours. The landlord referred to the photos of the property to demonstrate the condition the unit was left (**Exhibit L # 3**).

Analysis

24. The applicant is responsible to support and substantiate their claim beyond the balance of probabilities. In this portion of the claim the landlord has clearly shown that the tenant vacated the property without cleaning. From the evidence, I agree that it certainly would have taken more than the 2 hours claimed to clean the property. As such, I find that the tenant is responsible for the labor to clean the property in the amount of \$38.80 as claimed.

Decision

25. The landlord's claim for cleaning succeeds in the amount of \$38.80.

Issue 4: Hearing Expenses

Landlord Position

26. 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 cost.

Analysis

27. 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 tenant is responsible to cover these reasonable expenses.

Decision

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

Issue 5: Application of Security Deposit

Landlord Position

29. The landlord testified that a security deposit in the amount of \$300.00 was paid on the property on or about 20 August 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

Analysis

30. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$300.00. The landlord’s claim has been successful in part. The security deposit plus accrued interest is \$300.00 as the interest rate for 2019 – 2020 is set at 0%.

Decision

31. 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.

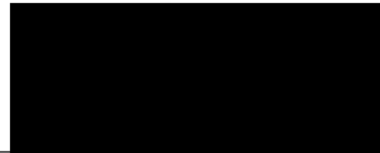
Summary of Decision

32. The landlord is entitled to the following:

a)	Rent Owing (up to and including 31 December 2019)	\$1100.00
b)	Cleaning.....	38.80
c)	Late Fees.....	75.00
d)	Hearing Expenses	<u>20.00</u>
e)	Subtotal.....	\$1233.80
f)	LESS: Security Deposit.....	<u>(\$300.00)</u>
g)	Total owing to Landlord	<u>\$933.80</u>

03 November 2020

Date



Michael Greene
Residential Tenancies Tribunal