

## Residential Tenancies Tribunal

Decision 19-0199-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:20 pm on 16 May 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, did not participate in the hearing. The applicant was represented by [REDACTED] (*Affirmed*) and hereafter shall be referred to as the landlord.
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 respondent, [REDACTED], hereafter referred to as tenant3 did not participate in the hearing.
6. The details of the claim were presented as a written fixed term rental agreement with rent set at \$1800.00 per month exclusive of utilities and due on the 1<sup>st</sup> of each month. It was stated that no security deposit was collected on this tenancy. The landlord issued a termination notice dated 11 February 2019 for the intended termination date of 22 February 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
7. 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

8. The landlord representative amended the application at the onset of the hearing to remove the request for vacant possession as the tenants vacated the property on or about 01 March 2019.
9. The tenants, [REDACTED], [REDACTED], and [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 affidavits submitted by the landlord shows that tenant1, tenant2 and tenant3 were served with the notice of this hearing on the **30 April 2019** by serving the documents to the tenants electronically at the email address: [REDACTED]. The affidavits were supported by presenting copies of the sent emails to each tenant and a copy of the rental agreement (Exhibit L # 1) indicating the email address for the tenants. The tenants have had **15 days** to provide a response.

Phone contact was attempted to the tenants prior to the hearing with the following results:

[REDACTED]: **Number not in service.**  
[REDACTED]: **Number not in service.**

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 in the tenants' absence.

## Issues before the Tribunal

10. The landlord is seeking the following:
  - a) Payment of rent owing **\$7435.00**
  - b) Late Fees **\$375.00**
  - c) Hearing expenses

## Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. 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 - \$7435.00

### Relevant Submissions

#### Landlord Position

13. The landlord stated that they entered into a written fixed term rental agreement with the tenants, commencing 01 September 2018 for the subject property and it was set to expire on 31 August 2019. The agreed rent was set at \$1800.00 per month exclusive of utilities and due on the 1<sup>st</sup> day of each month. There was no security deposit collected on this tenancy. The landlord issued a termination notice on 11 February 2019 for the intended date of 22 February 2019 (**Exhibit L # 2**) and testified that tenants vacated on or about 01 March 2019.
14. The landlord testified that she is seeking rent for the period of 01 November 2018 to 28 February 2019 @ a rate of \$1800.00 per month as the tenants have paid nothing since 01 November 2018. The landlord testified that no rent receipts were issued. There was no rental records presented at the hearing. The landlord stated that rent is outstanding in the amount of **\$7435.00** for the period ending 28 February 2019 and as of the hearing date 16 May 2019, rent remains outstanding.

### Analysis

15. 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.
16. With respect to the arrears being claimed, it is the responsibility of the applicant, in this case the landlord, to show beyond the balance of probabilities that the rent being claimed is actually owed by the tenants. Normally this is done by the presentation of the rental records associated with the tenancy. At the hearing the landlord did not present any rental records (receipts or rent ledgers). As there are no records to determine if any amount of rent is owed, I cannot accept that landlord's claim for rent. I further note a discrepancy that the landlord's claimed

amount was \$7435.00 but it was stated that the amount being sought was 4 months' rent @ \$1800.00 per month = \$7200.00. This adds further that an accurate set of rental records are required. As the landlord has failed to support the claim for rental arrears, I find that the claim fails.

### **Decision**

17. The landlords' claim for rent has not been supported with evidence to determine what is owed. As such, the claim for rent fails.

### **Issue 2: Payment of Late Fees - \$375.00**

#### Landlord Position

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

### **Analysis**

20. As established above the landlord has failed to support the claim for rental arrears and the claim has failed thereby eliminating any claim for late fees as it has not been established that the tenant was late for rent. As such, the claim for late fees fails.

### **Decision**

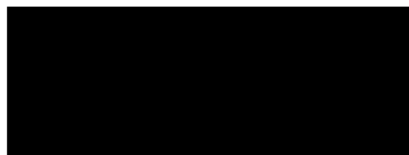
21. The landlords' claim for late fees fails.

### **Summary of Decision**

22. The landlords claim for rent and late fees fails.

8 July 2019

\_\_\_\_\_  
**Date**



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**Michael Greene**  
**Residential Tenancies Tribunal**