

Residential Tenancies Tribunal

Decision 20-0015-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:45 pm on **13 May 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as landlord, participated in the hearing and was represented by [REDACTED] – Property Manager.
3. The respondent, [REDACTED], hereafter referred to as tenant, did not participate in the hearing.
4. In a proceeding under the *Residential Tenancies Act*, 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

5. The application was AMENDED at the hearing to:
 - a. Remove [REDACTED] as a named Tenant as she has been vacated the property since January 2019 and arrears claimed have accumulated since this date;
 - b. Remove the request for Vacant Possession as the tenant vacated 04 March 2020;
 - c. Amend the file to increase rent being claimed to \$2584.19 reflecting rent that has come due since the filing of the application.

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 **27 February 2020** by serving the documents to the tenant personally at the rented premises. The tenant has had **21 days** to provide a response.

There was no contact information on file to contact the tenant.

7. 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 tenant's absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$2584.19**;
 - b) Payment of late fees
 - c) 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 - \$2584.19

Relevant Submissions

Landlord Position

11. The landlord testified that the tenant's partner vacated the property in January 2019 and the head office was never notified of this. The landlord testified that the resident manager was aware of the departure of the tenant and added that arrears for this property accumulated after the departure.
12. The landlord stated that he had entered into a one year fixed term rental agreement with the tenant which has since converted to a month to month tenancy. The agreed rent is set at \$840.00 per month and due on the 1st day of each month with a security deposit in the amount of \$600.00 collected on this tenancy on or about 16 May 2018. The landlord stated that the tenant made the last payment against the arrears on 17 December 2019 in the amount of \$840.00 and as of the hearing date remained in arrears. The landlord demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is \$2584.19.00 up to and including 02 March 2020.

Analysis

13. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent 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 only the respondent in this matter. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the written rental agreement established when the tenancy began. Records are clear that rent for the period ending 29 February 2020 has not been paid leaving a balance of **\$2530.00**. Further, rent for March 1 – 2, 2020 is calculated up to and including the day the tenant vacate (02 March 2020). That calculation is ($\$840.00 \times 12 \text{ months} = \$10,080.00 \div 366 \text{ days} = \$27.54 \text{ per day} \times 2 \text{ days} = \55.08). Rent for March 1 – 2, 2020 then is **\$55.08**.

Decision

15. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 29 February 2020 \$2530.00
 - b) Rent owing for March 1 – 2, 2020 55.08
 - c) Total Arrears **\$2585.08**
 - d) **Total Owing..... \$2585.08**

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 16 May 2019. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

18. Established by undisputed fact in paragraph 13, the tenant was in arrears since 16 May 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. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

20. The landlord's claim for late fees succeeds in the amount of the maximum allowable of \$75.00.

Issue 3: Application of Security Deposit

Landlord Position

21. The landlord testified that a security deposit in the amount of \$600.00 was paid on the property on or about 16 May 2018. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Analysis

22. Established by undisputed facts above, the tenant did pay a security deposit to the landlord in the amount of \$600.00. The landlord's claim has been successful and the tenant owes the landlord for rent, late fees and inconvenience. The interest rate set out by the Minister on security deposits for 2018 - 2020 is set at 0%. The security deposit plus accrued interest then is \$600.00.

Decision

23. 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.

Issue 4: 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 # 2**). The landlord is seeking this cost.

Analysis

25. 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

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

Summary of Decision

27. The landlord is entitled to the following:

a)	Rent Owing	\$2585.08
b)	Late Fees	75.00
c)	Hearing Expenses	<u>\$20.00</u>
d)	Sub-total	\$2680.08
e)	LESS: Security Deposit	<u>(\$600.00)</u>
f)	Total owing to the landlord	<u>\$2080.08</u>

26 May 2020

Date



Michael Greene
Residential Tenancies Tribunal