

Residential Tenancies Tribunal

Decision 20-0017-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:45 am** on **23 November 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, did not participate in the hearing and was represented by [REDACTED] - Property Manager (*Affirmed*) herein referred to as the landlord.
3. The applicant, [REDACTED], hereafter referred to as the landlord, did not participate in the hearing and was represented by [REDACTED] - Property Manager (*Affirmed*) herein referred to as the landlord.
4. The respondent, [REDACTED], hereafter referred to as tenant1, did not participate in the hearing and was represented by [REDACTED] – (*Affirmed*).
5. The respondent, [REDACTED], hereafter referred to as tenant2, participated in the hearing. (*Affirmed*)
6. The details of the claim were presented as a written fixed term rental agreement with rent set at \$1900.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$1425.00 was collected on the tenancy on or about 04 September 2018. The agreement was set to expire on 31 August 2019.
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 affidavit submitted by the landlord show that tenant1 was served with the notice of this hearing on the **16 October 2020** by serving the application for dispute resolution document to tenant1 and tenant2 by personal service to the address of [REDACTED]
9. Tenant2 amended the application to reflect the correct spelling of her first name to be [REDACTED]
10. The landlord amended the claim to remove the request for a cleaning fee in the amount of **\$117.30** identified under other.

Issues before the Tribunal

11. The landlord is seeking the following:
 - a) Payment of rent in lieu of notice **\$5700.00**
 - b) Payment of Late Fees **\$75.00**
 - c) Other **\$350.00**
 - d) Hearing expenses

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. 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 - \$5700.00

Relevant Submissions

Landlord Position

14. The landlord is seeking payment of rent in the amount of \$5700.00 for the months of October – December 2019 at a monthly rate of \$1900.00. The landlord indicated that the tenants vacated on or about 14 November 2019. The landlord submitted a ledger of account for the tenants (**Exhibit L # 1**) along with a copy of the rental agreement (**Exhibit L # 2**).

15. The landlord testified that the tenants' payments of rent became increasingly late. He indicated that it became apparent that the tenants would abandon the unit so he began the process to re-rent the unit. The landlord stated that the property was re-rented for 18 January 2020.

Tenant Position

16. Tenant2 disputes the claim of the landlord in this regard. Tenant2 stated that they initially paid rent on the first of the month and was later approved to pay on the 15th of the month. Tenant2 testified that there was too many outstanding issues with the property manager and things being requested and not being done. Tenant2 stated they had enough and terminated the tenancy on 18 September 2019 for the intended termination date of 01 November 2019 (**Exhibit T # 1**).

Analysis

17. I have reviewed the testimony and evidence of the landlord and tenants 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.
18. First to deal with the notion that rent can be withheld. This is not the case unless ordered by this tribunal to pay rent in trust. There is no provisions under the Residential Tenancies Act, 2018 to withhold rent for no repairs. There is a method to deal with such events within the legislation that does not involve withholding rent.
19. With respect to the rent in lieu of proper notice being claimed, it is not obvious from the evidence when the tenants left the unit. The tenants' termination notice indicates 01 November 2019. Further, tenant2 indicated that there was some approval to begin payment of rent on the 15th of the month, but did not provide any documentation to that effect. In addition, the landlord's rental records indicate payments for the 1st of each month. As such, I will assume payment is due on the 1st of each month.
20. The tenants' notice to terminate on a month to month tenancy would be on or before the day rent is due (1st of the month) to be effective for the last day of the rental period (last day of the month). The notice provided by the tenants do not follow this requirements and therefore would be technically not valid.
21. The landlord would only be entitled for 1 month notice in lieu of notice, in this case that being for the month of November 2019. Records also indicate that payment for the month of October was not received and as such the tenants are responsible for rent in the amount of **\$3800.00** covering the periods of 01 October – 30 November 2019.

Decision

22. The landlord's total claim for rent succeeds as follows:
- a) Rent owing up to 30 November 2019 \$3800.00

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

23. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent for 01 October – 31 December 2019.
24. The landlord testified that the tenants have been in arrears since 01 October 2019. The landlord indicated that they are seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

25. Established above, the tenants were in arrears for the period beginning 01 October 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.
26. Given that the tenants have been in arrears since 01 October 2019, the calculated amount of late fees will exceed the maximum allowable of \$75.00.
27. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlord.

Decision

28. 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: Other - \$350.00

Landlord Position

29. The landlord testified that they are seeking compensation for snow clearing services incurred for the month of November and December 2019 when the tenants abandoned the property. The landlord submitted an invoice from [REDACTED] (Exhibit L # 3) in the amount of \$350.00.
30. The landlord indicated that they have a snow clearing route and when they are in the area they clear the driveways on the route. The landlord did not indicate when the driveway was cleared and there was nothing presented to show snow clearing was required.

Tenant Position

31. Tenant2 disputes this claim stating they do not feel responsible. Tenant2 stated that they used another snow clearing service during the tenancy and don't feel responsible now.

Analysis

32. I have reviewed the testimony and evidence of the landlord and tenant2 in this matter. There is no doubt that the unit was abandoned (vacated without proper notice). However, the landlord cannot make an arbitrary charge without proving on the balance of probabilities that there was a requirement for the service being claimed.
33. The tenants would be responsible for the snow clearing for the month of November 2019 if there were a need for the service. The submission of an invoice from the [REDACTED] does not prove that the service was required. As the landlord has failed to demonstrate that this service was required, the claim for snow clearing fails.

Decision

34. The landlord's claim for snow clearing fails.

Issue 4: Application of Security Deposit

Landlord Position

35. The landlord testified that a security deposit in the amount of \$1425.00 was paid on the property on or about 04 September 2018. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Tenant Position

36. The tenants are seeking to have the security deposit refunded.

Analysis

37. Established by undisputed facts above, the tenants did pay a security deposit to the landlord in the amount of \$1425.00. The landlord's claim has been partly successful and the tenants owe the landlord for rent and late fees. 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 \$1425.00.

Decision

38. As the landlord's claim above has been partly successful, the landlord shall apply the security deposit being held against any amount outstanding as directed in the attached order.

Issue 5: Hearing Expenses

Landlord Position

39. 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 expense.

Analysis

40. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlords 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 the reasonable expense of the application filing fee in the amount of \$20.00.

Decision

41. The tenants shall pay the reasonable expense of the landlord in the amount of \$20.00.

