

Residential Tenancies Tribunal

Decision 20-0036-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **25 February 2021** 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 landlord1, participated in the hearing (*Affirmed*).
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as the tenant1 did not participate in the hearing (*Absent and Not Represented*).
5. The respondent, [REDACTED], hereafter referred to as the tenant2 did not participate in the hearing (*Absent and Not Represented*).
6. The details of the claim were presented as a written fixed term rental agreement with rent set at \$675.00 per month and due on the 1st of each month and the agreement set to expire on 30 November 2021. There was no security deposit collected on the tenancy and there was no termination notice issued on the tenancy from either party to the contract. The landlords stated that the tenants entered into the rental contract and failed to move into the property.
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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

8. 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 landlords show that tenant1 was served with the notice of this hearing on the **10 January 2021** as per section 42(6) of the *Residential Tenancies Act, 2018* by serving the original documents to tenant1 via registered mail: [REDACTED].

The affidavit submitted by the landlords show that tenant2 was served with the notice of this hearing on the **10 January 2021** as per section 42(6) of the *Residential Tenancies Act, 2018* by serving the original documents to tenant2 via registered mail: [REDACTED].

A phone call was placed to the numbers on file for the tenants with no answer and a messages left [REDACTED] and [REDACTED].

9. As the tenants were properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicants, I proceeded in the tenants' absence.

Issues before the Tribunal

10. The landlords are seeking the following:

- a) Payment of rent owing **\$675.00**
- b) Payment of Late Fees **\$75.00**
- c) Compensation for Inconvenience **\$500.00**
- d) Hearing expenses **\$32.71**

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
 - a. Policy 9-4: *Claims for Compensation* and;
 - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.*

Issue 1: Rent Owing - \$675.00

Relevant Submissions

Landlord Position

13. The landlords stated that the tenants entered in to the rental agreement for a fixed term agreement (**Exhibit L # 1**) and made specific requests of the landlords as a condition to signing a 1 year agreement. The tenants requested that a wood stove be installed (**Exhibit L # 2**). The landlords agreed and installed the stove.
14. The landlords testified that the tenants did not move into the property as per the rental agreement and they are claiming rent in lieu of notice for the first month of the agreement (December 2020) in the amount of \$675.00.
15. Landlord1 testified that he was able to re-rent the property for 01 January 2021.

Analysis

16. I have reviewed the testimony and evidence of the landlords 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 landlords actually owed by the tenants.
17. With respect to the rent being claimed, I agree with the landlords that rent is owed. The tenants entered into a rental agreement for a 1 year period and are contractually responsible for this agreement to it final conclusion. Luckily for the tenants, the property was re-rented 1 month later thereby concluding the tenancy and the tenants' responsibility. Had the landlords not mitigated their loss so quickly, the tenants would have been responsible for the completion of the rental term (1 year).
18. 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. The tenants signed the agreement and therefore are responsible for the month of December 2020 as the landlords mitigated their loss and rented for 01 January 2021. As such, I find that the landlords are entitled to rent for the month of December 2020 in the amount of **\$675.00** for the loss created by the tenants failure to honor the legal contract between the parties.

Decision

19. The landlords' total claim for rent succeeds as follows:

a) Rent owing up to 31 December 2020..... \$675.00

Issue 2: Payment of Late Fees - \$25.00

Landlord Position

20. The landlords are seeking payment of late fees as a result of the tenants' failure to pay rent.

21. The landlords testified that the tenants have been in arrears since 01 December 2020. The landlords indicated that they are seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

22. Established by undisputed fact above, the tenants were in arrears for the period ending 31 December 2020. 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.

23. Given that the tenants have been in arrears since 01 December 2020, the calculated amount of late fees is:

a. 1 st day late (December 2, 2020)	\$5.00
b. Subsequent days @ \$2.00 (29 days)	<u>58.00</u>
c. Total allowable	<u>\$63.00</u>

24. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlords. The landlords have only claimed \$25.00 as a late fee and this will be the maximum award.

25. As such, the landlords' claim for late fees is successful in the amount of \$25.00.

Decision

26. The landlords' claim for late fees succeeds in the amount of \$25.00 as per the regulations established under the *Residential Tenancies Act, 2018*.

Issue 3: Hearing Expenses

Landlord Position

27. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Digital Government and Service NL (██████) (**Exhibit L # 3**). The landlords further paid a fee in the amount of \$25.42 to Canada Post (**Exhibit L # 4**) for the service of documents by Registered Mail. The landlords are seeking these expenses.

Analysis

28. I have reviewed the testimony and evidence of the landlords 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 these reasonable expenses.

Decision

29. The tenants shall pay the reasonable expenses of the landlords in the amount of \$45.42.

Issue 4: Compensation for inconvenience \$500.00

Landlord Position

30. Landlord1 testified that he only installed the wood stove in the property at the request of the tenants, indicating it as a condition for renting the property for 1 year.
31. The landlords testified that the purchase of a new stove, chimney, and certification of the installation to a WETT Standard for insurance purposes came at a significant cost to them. Landlord1 testified that this was a grave inconvenience to him in having to take the time away for other things in a busy time of year to install the stove. Landlord1 is seeking an amount of \$500.00 for his labor to install a stove (up to 40 hours) that is no longer required. He stated that the materials, certification and labor costs thousands but he understands that he still has the stove as an asset and is not seeking this costs, but only his time to install the unit as the inconvenience.

Analysis

32. The installation of a wood burning stove in a residential dwelling does come at a significant expense and time. The tenants particularly negotiated this element of

the agreement with the landlords, thereby, making it a binding part of the rental contract. This is not what I would refer to as an inconvenience but more of a loss to the landlords and better described in a claim as a damage. I will treat this as a loss/damage in this analysis. A claim for the asset portion of the stove would have no merit as the landlords still has full use of the newly added asset, and undoubtedly it will add some value to the rental at some point. I do, however, agree with the landlords regarding the labor portion of this negotiated and agreed portion of the contract. The landlords claim of 40 hours I find generous and within market conditions for the installation of a wood stove and chimney and certification to a WETT Standard of same.

33. The allowable labor rate for a landlord at the time is \$20.15 per hour. Using this amount to calculate the loss, I calculate it to be \$806.00 (\$20.15per hour x 40 hours = \$806.00. I find that the tenants are responsible for the labor to install the wood stove, chimney and certification of the stove. The calculated cost exceeds what the landlords have claimed, but the landlords are entitled to a maximum of \$500.00 as claimed.

Decision

34. The landlords' claim for labor to install the wood stove is successful in the amount of \$500.00.

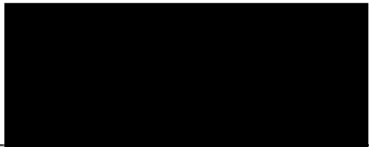
Summary of Decision

35. The landlords are entitled to the following:
- a) Rent Owing (up to and including 31 December 2020)\$675.00
 - b) Late Fees.....25.00
 - c) Loss/Damages500.00
 - d) Hearing Expenses \$45.42

 - e) **Total Owing to the Landlords\$1245.42**

03 March 2021

Date


Michael Greene
Residential Tenancies Tribunal