

Residential Tenancies Tribunal

Decision 20-0040-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **10 November 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. (*Affirmed*)
3. The respondent, [REDACTED], hereafter referred to as tenant, participated in the hearing. (*Affirmed*)
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 reflect the correct spelling of the tenants name to be [REDACTED].
6. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **28 July 2020** by serving the documents to the tenant at the address [REDACTED] by way of registered mail ([REDACTED]) and providing proof of delivery from Canada Post.
7. The tenant called a witness: [REDACTED] (**Personal Care Worker**) – *Affirmed*.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$450.00**;
 - b) Payment of late fees **\$75.00**
 - c) Damages **\$100.13**
 - d) Hearing expenses **\$34.88**
 - e) Application of Security Deposit

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 Owning - \$450.00

Relevant Submissions

Landlord Position

11. The landlord testified that the tenant failed to pay the final months rent in full leaving a balance outstanding in the amount of \$450.00.
12. The landlord testified that rent was never an issue with the tenant until she received a cheque for \$150.00 and a note that indicated she can retain the security deposit as the balance of rent owing for the month.
13. The landlord submitted into evidence a copy of the rental agreement (**Exhibit L # 1**), a copy of the rent ledger (**Exhibit L # 2**) showing rent outstanding in the amount of \$450.00.

Tenant Position

14. The tenant acknowledged not paying the full final months rent as she normally would have, but instead acknowledged that the landlord could retain the security deposit as payment.

Analysis

15. I have reviewed the testimony and evidence of the landlord and tenant 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.
16. With respect to the arrears being claimed, I agree with the landlord that rent is owed by 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 rental agreement established when the tenancy began.
17. The tenant does not have the right or ability to arbitrarily use the security deposit against the final months rent unless both parties agree on same in writing. There was no written agreement to dispose of the security deposit between the parties.
18. Records are clear that rent for the period ending 30 June 2020 has not been paid leaving a balance of \$450.00. As such, this portion of the landlord's claim is successful in the amount of **\$450.00**.

Decision

19. The landlord's total claim for rent succeeds in the amount of \$450.00

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

20. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
21. The landlord testified that the tenant has been in arrears since 01 June 2020. The landlord indicated that she is claiming late fees as allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

22. Established by undisputed fact above, the tenant was in arrears since 02 June 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. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord. The calculated late fee would then be:

a. June 2, 2020 :	\$5.00
b. June 3 – 30, 2020	<u>\$56.00</u>
c. Total Late Fees	<u>\$61.00</u>

Decision

24. The landlord’s claim for late fees succeeds in the amount of **\$61.00**.

Issue 3: Compensation for Damages - \$100.13

Relevant Submissions

Landlord Position

25. The landlord testified that when the property was recovered it was noticed that the following items were damaged as outlined:
- a. Cleaning Labor/Materials (**Labor - \$11.00 & Materials - \$49.13**)
 - b. Garbage Removal (**Labor \$40.00**)
26. The landlord submitted into evidence a copy of the incoming and final inspection reports (**Exhibit L # 7 & 8**) along with the claim breakdown (**Exhibit L # 4**) and the rental agreement (**Exhibit L # 1**). The landlord testified that when the property was recovered she noted that the property was not as clean as it should have been and there was garbage left around the furnace room. The landlord submitted photos of the claimed damages (**Exhibit L # 5**). She stated that the furnace room had bags of garbage, what appeared to be leftover moving boxes, old furniture and other boxes such as a BBQ box.
27. In addition, the landlord testified that the garbage bins were left with bags of household garbage and kitty litter in them. The landlord stated that the upstairs tenant don’t have a cat, but the respondent does.

Tenant Position

28. The tenant called a witness (█) who testified that there was a lot of stuff in the furnace room that didn’t belong to the tenant. The witness explained that we didn’t use the waste bins as they had another person come by weekly to remove the garbage and take it away. She further explained that the tenant did not own a BBQ and the furnace room was used to store some things like a fold up chair, vacuum and some boxes that were used to move.

29. The witness went on to state that she did not personally clean the oven, but insisted that the other support worker did.
30. The tenant testified that she was not in the property from 21 December 2019 to 25 February 2020 as a result of a fall and further was not physically able to do garbage removal.

Analysis

31. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The applicant is required to establish three criteria for a successful claim as follows:
 - a. Show that the damage exists
 - b. Show that the respondent is liable
 - c. Show a valuation for the repair or replacement
32. The Incoming inspection report in conjunction with the photos presented demonstrates that the oven was not cleaned when the tenant vacated. It is immaterial if the tenant could do it herself or if the support workers looking after the care of the tenant did it. The responsibility falls back to the tenant as part of the contractual obligations for the tenancy.
33. The area around the sink did have some items left around including two empty Pepsi Cans and some cardboard. This would have been minimal in the clean up, but I particularly note the Pepsi Cans for discussions below. I accept the evidence of the landlord that a cleaning of the oven and minimal clean up around the sink was required. I find the tenant responsible and award the landlord compensation for the cleaning materials as claimed from personal stock in the amount of \$11.00 plus the reasonable labor of 1.5 hours to clean the stove for a total of **\$40.48**. The evidence presented does not warrant 2.5 hours of cleaning and is seen as excessive.
34. With regard to the items left in the furnace room, as mentioned above, I particularly noted the fact of Pepsi Cans left on the sink area. Further I note that in the furnace room photos, there is a bag of refuse that holds a cardboard box used to hold 24 Pepsi Cans. This bag of garbage is placed with other refuse and I make the reasonable assumption that the refuse belongs to the same tenant. The connection of the Pepsi Cans and box leads me also to the reasonable assumption that the refuse was placed there either by the tenant or a worker responsible for the tenant. In either case, the responsibility is that of the tenant. Further, the tenant's witness did indicate that the room was used by the tenant and there was also what appears to be broken down boxes that appear to be left over from the moving process. For these I find the responsibility of the tenant as well.

35. Regarding the remaining items in the furnace room, I can make no clear determination, but the garbage in the bins, I find the responsibility of the tenant as there is kitty litter present and she was the owner of a cat in the building. The remaining items in the furnace room could be belonging to former tenants or the adjacent tenant. This is not clear. As such, I find the tenant responsible for ½ of the costs for the junk removal services in the amount of **\$20.00**.

Decision

36. The landlord's claim for damages succeeds as follows:

a. Cleaning (Materials/labor):	\$40.48
b. Junk Removal	<u>20.00</u>
c. Total	<u>\$60.48</u>

Issue 4: Application of Security Deposit

Landlord Position

37. The landlord testified that a security deposit in the amount of \$450.00 was paid on the property on or about 01 December 2019. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Tenant Position

38. The tenant was agreeable for the landlord to retain the security deposit.

Analysis

39. Established by undisputed facts above, the tenant did pay a security deposit to the landlord in the amount of \$450.00. The landlord's claim has been successful and the tenant owes the landlord for rent, late fees and damages. The interest rate set out by the Minister on security deposits for 2019 - 2020 is set at 0%. The security deposit plus accrued interest then is \$450.00.

Decision

40. 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 5: Hearing Expenses

Landlord Position

41. The landlord paid a fee in the amount of **\$20.00** as an application filing fee and presented a receipt from Service NL ([REDACTED]) (**Exhibit L # 9**). The landlord paid a fee to Canada Post in the amount of **\$14.88** for Registered Mail Services (**Exhibit L # 10**) to serve the claim documents. The landlord is seeking these costs.

Analysis

42. 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

43. The tenant shall pay the reasonable expenses of the landlord in the amount of **\$34.88**.

Summary of Decision

44. The landlord is entitled to the following:

a)	Rent Owing	\$450.00
b)	Late Fees	61.00
c)	Damages	60.48
c)	Hearing Expenses	<u>\$34.88</u>
d)	Sub-total	<u>\$606.36</u>
e)	LESS: Security Deposit	<u>(\$450.00)</u>
f)	Total owing to the landlord	<u>\$156.36</u>

31 December 2020

Date

[REDACTED]
Michael Greene
Residential Tenancies Tribunal