

Residential Tenancies Tribunal

Decision 20-0078-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm** on **31 March 2021** 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 the tenant, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the landlord, did not participate in the hearing. (*Absent and Not Represented*).
4. The details of the tenancy are a verbal monthly tenancy commencing on 01 November 2020. Rent was set at \$975.00 per month with utilities extra and no security deposit collected on this tenancy.
5. 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 have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The landlord, [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 tenant shows that the landlord was served with the notice of this hearing on the **08 March 2021** by serving the original documents to the landlord by email: [REDACTED] and attaching copies of the email sent and verification of the email from the landlord.

A phone call was placed to the landlord's number on file [REDACTED] with no answer and a message was left.

The landlord has had **22 days** to provide a response.

As the landlord was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the tenant applicant, I proceeded in the landlord's absence.

7. The tenant did not claim any hearing expenses at the hearing.

Issues before the Tribunal

8. The tenant is seeking the following:
 - a) Refund of rent **\$500.00**;

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:
 - i. Section 9(1) of *the Act* and;
 - ii. Policy 6-1: *Abandonment*

Issue 1: Rent Owing - \$500.00

Relevant Submissions

Tenant Position

11. The tenant testified that an agreement was reached to rent the landlord's property at [REDACTED] and a payment of \$500.00 was made by the tenant.

12. The tenant testified that she would lose \$600.00 on her current place of residence if she didn't provide any notice to her current landlord.
13. The tenant testified that she later decided to not take the new property and indicated to the landlord that she declined the unit. The tenant further claimed that the landlord re-rented the unit.
14. The tenant testified that she kept watching the unit and indicates that people re-rented the property for the end of October 2020. The tenant submitted a letter (**Exhibit T # 1**) that she wrote to the Tribunal.
15. There was no notice provided to the new landlord in this matter.

Analysis

16. I have reviewed the testimony and evidence of the tenant in this matter. As far as I can see, there are 4 issues here to be addressed:
 - i. is there an established Landlord and Tenant Relationship;
 - ii. has the tenant made a payment of rent in this tenancy;
 - iii. was there any formal notice of termination provided;
 - iv. has the landlord re-rented the property and mitigated his losses.
17. With respect to the establishment of a landlord and tenant relationship and payment of rent, these are fairly clear. The tenant herself has indicated that her and the respondent entered into an agreement to rent the respondent's property for 01 November 2020 and placed a payment of \$500.00 as partial rent with the balance due upon move in.
18. Section 9(1) of the *Residential Tenancies Act, 2018 (RTA, 2018)* provides that a landlord and tenant relationship can exist without entry into the premises and reads:

Landlord and tenant relationship

9. (1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.
19. As indicated above, I find that there was a landlord and tenant relationship between the parties and as such, all elements of the *RTA, 2018* apply to this tenancy.
20. Regarding a formal notice of termination, there has been no evidence presented of any such notice issued on this tenancy. It is the tribunals understanding that no formal notice of termination was issued.

21. Lastly, the tenant claims that the landlord has re-rented the property and claims that the landlord also collected rent from the new tenants for the same period of time as was covered by her rent payment.
22. The tenant's evidence is her statement that she watched the property regularly and indicates she saw people moving into the property. The tenant has presented no corroborating evidence to support her claims (ie: photos, records, witnesses, etc).
23. It is the responsibility of the applicant in any matter to prove on the balance of probabilities that what they are claiming is accurate and supported. There is nothing to even remotely support the tenant's claims in this matter and as such I find that the claim is not supported to the level of the burden of proof required and as such, the claim fails.

Decision

24. The tenant's claim for refund of rent fails.

Summary of Decision

25. The tenant's claim for the refund of rent fails.

21 April 2021

Date



Michael Greene
Residential Tenancies Tribunal