

Residential Tenancies Tribunal

Decision 20-0260-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:45 pm** on **20 July 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 the tenant, did not participate in the hearing. (*Absent and Not Represented*).
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 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 **09 July 2020** by serving the original documents to the tenant by email at: [REDACTED]

The tenant has had **10 days** to provide a response.

A phone call was placed to the tenant's phone number [REDACTED] and it was not in service.

6. 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

7. The landlord is seeking the following:
 - a) Payment of rent owing **\$2250.00**;
 - b) Payment of late fees
 - c) Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. 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 - \$2250.00

Relevant Submissions

Landlord Position

10. The landlord stated that he had entered into a monthly rental agreement (**Exhibit L # 2**) with the tenant on 01 February 2018. The agreed rent is set at \$750.00 per month and due on the 1st day of each month with a security deposit in the amount of \$550.00 collected on this tenancy on or about 31 January 2018. The landlord demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is \$2250.00 up to and including 31 October 2019. The landlord stated as of the hearing date 21 July 2020 rent remained outstanding.

11. The landlord testified that he issued a termination notice (**Exhibit L # 4**) on 18 September 2019 for the termination date of 29 September 2019 under section 19 of the *Residential Tenancies Act, 2018*.
12. The landlord further stated that he served an abandonment notice by posting it on the property on 30 September 2019 and recovered the unit on 01 October 2019.
13. The landlord stated that he is seeking rent for the month of October 2019 due to the lack of notice from the tenant.

Analysis

14. 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.
15. With respect to the arrears being claimed, I agree with the landlord that rent is owed. 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.
16. Records are clear that rent for the period ending 30 September 2019 has not been paid leaving a balance of **\$1500.00**.
17. Rent for the month of October however is not as clear cut as the landlord would believe. On 18 September 2019 the landlord issued a termination notice under section 19 of the Residential Tenancies Act, 2018 for the non-payment of rent. This notice in effect terminates the tenancy on the prescribed date of 29 September 2019. As the landlord has terminated the tenancy and it is obviously apparent the tenant adhered to the notice and moved from the unit, there is no legal requirement for the tenant to provide any notice for October 2019. As the landlord then has terminated the tenancy, the landlord is not entitled to rent in lieu of notice for October 2019.

Decision

18. The landlord's claim for rent succeeds as follows:
 - a) Rent owing up to 30 September 2019 \$1500.00
 - b) Total due to Landlord..... \$1500.00**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

19. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
20. The landlord testified that the tenant has been in arrears on an ongoing basis since August 2019. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

21. Established by undisputed fact above, the tenant was in arrears since August 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.
22. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

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

Issue 3: 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 # 3**). 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.

Issue 4: Application of Security Deposit

Landlord Position

27. The landlord testified that a security deposit in the amount of \$550.00 was paid on the property on or about 31 January 2018. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

Analysis

28. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$550.00. The landlord's claim has been successful. The security deposit plus accrued interest is \$550.00 as the interest rate for 2018 – 2020 is set at 0%.

Decision

29. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held against the attached Order as outlined in the attached.

Summary of Decision

30. The landlord is entitled to the following:

a)	Rent Owing	\$1500.00
b)	Late Fees.....	75.00
c)	Hearing Expenses	\$20.00
d)	Subtotal	\$1595.00
e)	LESS: Security Deposit	(\$550.00)
f)	Total Owing to the Landlord	<u>\$1045.00</u>

28 July 2020

Date



Michael Greene
Residential Tenancies Tribunal