

Residential Tenancies Tribunal

Decision 20-0265-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **30 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 the landlord, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the 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 claim was amended at the onset of the hearing to reduce the amount of late fees being claimed to \$75.00 as allowed for under regulations.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a) Payment of rent owing **\$2850.00**;
 - b) Payment of late fees
 - c) Damages **\$486.71**
 - d) Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
8. Also relevant and considered in this case are:
 - a. Sections 19, 34 and 35 of *the Act*, and;
 - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
 - c. Policy 9-3: *Claims for Damages to Rental Premises*, and;
 - d. Policy 9-5: *Life Expectancy of Property*.

Issue 1: Rent Owning - \$2850.00

Relevant Submissions

Landlord Position

9. The landlord stated that they had entered into a written term rental agreement with the tenant set to expire on 31 March 2021 with rent set at \$950.00 per month and due on the 1st day of each month and a security deposit in the amount of \$475.00 collected on this tenancy on or about 03 April 2020. The landlord demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is **\$0.00** up to and including 31 May 2020. The landlord issued a termination notice under section 19 of the *Act* to terminate the tenancy on 17 June 2020 (**Exhibit L # 2**).
10. The landlord is claiming rent for June, July and August 2020 in the amount of **\$2850.00**. The landlord stated that the tenant vacated the property as of 03 July 2020.

Tenant Position

11. The tenant disputes this portion of the claim stating that she paid rent for April and May when she lived in the property. The tenant claims the notice was for the use of the backyard. She claim that the landlord asked her to send him an email indicating she would be out by 02 July 2020 and further stated she was gone as per the notice by 01 July 2020. There was no such email presented into evidence.

Analysis

12. 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.

13. With respect to the arrears being claimed, I do agree with the landlord that a portion of the rent being claimed is owed by the tenant. 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. The landlord has testified that he terminated the tenancy (**Exhibit L # 2**) effective 17 June 2020. The tenant testified that she was gone from the unit by 01 July 2020 even though the landlord indicates the tenant was there until 03 July 2020. To the success or failure of this portion of the claim, the vacating date is immaterial.
14. I note that the validity of the landlord's termination notice issued is questionable. On review of the technical requirements of the notice based on what both parties have indicated, the tenant was not in arrears at least 5 days when the notice was issued as required. Further, the notice period has to be at least 10 clear days from the date of issue to the termination date. Neither of these requirements were met. However, the tenant moved from the property on a good faith basis.
15. The legal fact is that the landlord terminated the tenancy when he issued the notice to terminate which he assumed was valid. The tenant obviously acted on the notice and moved from the unit as requested by the landlord. As such, I find that the landlord is not entitled to any further compensation for rent beyond the date the termination was effective or the date the tenant vacated, whichever is later. For this part, I accept that the tenant was reasonably moved by 01 July 2020 and as such the landlord would not be entitled to any rent beyond 30 June 2020.
16. The tenant has acknowledged not paying rent for the month of June 2020 and as such I find the tenant owes rent in the amount of \$950.00

Decision

17. The landlord's total claim for rent succeeds in the amount of \$950.00.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

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

Analysis

20. Established by undisputed fact above, the tenant was in arrears as claimed by the landlord. 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.
21. As the tenant was in arrears and owed rent for June 2020, a late fee is applicable. A calculated amount of late fees for the month of June is as follows:
 - a. June 2, 2020: \$5.00
 - b. June 3-30, 2020: \$56.00
 - c. **Total Late Fee: \$61.00**

Decision

22. The landlord's claim for late fees succeeds in the amount of \$61.00.

Issue 3: Compensation for Damages - \$486.71

Relevant Submissions

Landlord Position

23. The landlord testified that when the property was recovered he noted several areas of damage and a breakdown of costs was supplied (**Exhibit L # 6**) as follows:
 - a. Replace mini blinds (**\$51.71**)
 - b. Clean the property (**\$300.00**)
 - c. Replace bathroom cabinet (**\$115.00**)
24. There were no incoming inspection reports presented nor were there any baseline photos taken of the property submitted as evidence.
25. The landlord testified that when the property was recovered he noted that the blinds were cracked and had to be replaced. He stated that the center blind in the living room was replaced prior to the tenant moving into the property. The landlord referred to photos of the property submitted (**Exhibit L # 3**) to demonstrate the damages noted. He further added that there were no invoices, estimates or receipts for the replacement of blinds being claimed.

26. Further, the landlord is seeking costs for a professional cleaning service in the amount of \$250.00 as well as \$50.00 for the removal of items to the landfill. The landlord referred to the photos submitted and testified that there were no receipts for the professional services supplied.
27. Lastly, the landlord is seeking compensation for the replacement of a bathroom cabinet in the amount of \$250.00. He testified that there were no actual photos of the bathroom cabinet or any estimates, receipts or invoices for the replacement costs. The landlord stated that he looked on canadiantire.ca and found a cost of \$99.00 plus HST. There was nothing presented from canadiantire.ca.

Tenant Position

28. The tenant disputed the landlord's claim stating that the claims being made were outrageous. She stated that the blinds were not new when she moved into the property and were cracked.
29. The tenant testified that the bathroom cabinet was not attached and tipped over. She added that the house was a state when she moved into the unit and she had to clean before she moved in. It is noted here that the landlord acknowledged that the tenant had to clean the unit.
30. Lastly, the tenant acknowledged that she left a swing set on the deck on the property.

Analysis

31. The basis of determining awards for any damage claim is the same. The applicant holds the burden of proof and in cases associated with Residential Tenancies is "on the balance of probabilities".
32. In presenting a claim the applicant is required to (1) show that a damage exists, (2) show that the respondent is liable for the damages and (3) show a cost for the repair or replacement of the damages.
33. On the matters above, the landlord has failed to show any sort of valuation for the repairs or replacement of the amounts claimed. In addition, the landlord has not established a baseline of the condition of the property in advance of the tenant taking possession. This is an essential element in determining liability for the damages. The landlord did show that the property was left in a mess, but I add that the landlord acknowledged that the tenant did have to clean the unit upon move in. It is more than likely that the tenant left the unit in a similar condition as it was received.

34. I do not accept the evidence of the landlord in this portion of the claim. The landlord has not met the legal tests required for any damage claim. As such, the landlord's claim for damages fails.

Decision

35. The landlord's claim for damages fails.

Issue 4: Hearing Expenses

Landlord Position

36. 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 cost.

Analysis

37. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The expenses incurred by the landlord is 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* in the event the claim has been successful. As the landlord's claim has been successful, I find the tenant shall cover the reasonable expenses of the landlord.

Decision

38. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Issue 5: Application of Security Deposit

Landlord Position

39. The landlord testified that a security deposit in the amount of \$475.00 was paid on the property on or about 03 April 2020. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

Analysis

40. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$475.00. The landlord's claim has not been successful. The security deposit plus accrued interest is \$475.00 as the interest rate for 2020 is set at 0%.

Decision

41. As the landlord’s claim above has been successful, the landlord shall offset the security deposit being held as determined in the attached Order.

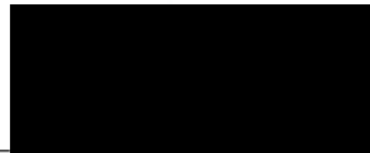
Summary of Decision

42. The landlord is entitled to the following:

a)	Rent.....	\$950.00
b)	Late Fees.....	61.00
c)	Hearing Expenses	<u>20.00</u>
d)	Subtotal.....	\$1031.00
e)	LESS: Security Deposit	<u>(\$475.00)</u>
f)	Total owing to Landlord	<u>\$556.00</u>

03 November 2020

Date



Michael Greene
Residential Tenancies Tribunal