

Residential Tenancies Tribunal

Decision 20-0279-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **22 September 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. Both parties to this claim have acknowledged that the security deposit being held was applied by the landlord to amounts outstanding leaving the balance of rent being claimed.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a) Payment of rent owing **\$2012.00**;
 - b) Payment of late fees
 - c) 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 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 - \$2012.00

Relevant Submissions

Landlord Position

9. The landlord stated that they had entered into a written monthly rental agreement with the tenant with rent set at \$750.00 per month and due on the 1st day of each month with a security deposit in the amount of \$375.00 collected on this tenancy on or about 15 November 2017. The landlord demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is \$2012.00 up to and including 07 April 2020. The landlord stated that the tenant vacated the property as of 07 April 2020.

Tenant Position

10. The tenant acknowledged owing the arrears as claimed.

Analysis

11. 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.
12. With respect to the arrears being claimed, I agree with the landlord and the tenant 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. Records are clear that rent for the period ending 31 March has not been paid leaving a balance of **\$1825.00**. Further, rent for April can only be awarded up to the date the tenant vacated as they done so under a notice from the landlords. Rent for April 1 – 7, 2020 is calculated as $(\$750.00 \times 12 \text{ months} = \$9000.00 \div 366 \text{ days} = \$24.59 \text{ per day} \times 7 \text{ days} = \$172.13)$. Rent for April 1 – 7, 2020 is **\$172.13**.

Decision

13. The landlord's total claim for rent succeeds as follows:

- a) Rent owing up to 31 March 2020 \$1825.00
- b) Rent owing for April 1 – 7, 2020 172.13
- c) Total Arrears **\$1997.13**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

- 14. The landlords are seeking payment of late fees as a result of the tenant's failure to pay rent on time.
- 15. 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

- 16. Established by undisputed fact above, the tenant was in arrears since February 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.
- 17. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

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

Issue 3: Hearing Expenses

Landlord Position

- 19. 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 further submitted a receipt from a process server for the service of documents (**Exhibit L # 4**) in the amount of \$50.00. The landlord is seeking these costs.

Analysis

20. I have reviewed the testimony and evidence of the landlord 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 is responsible to cover these reasonable expenses.

Decision

21. The landlord’s claim for hearing expenses succeeds in the amount of \$70.00.

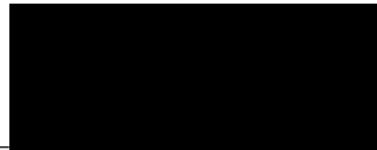
Summary of Decision

22. The landlord is entitled to the following:

a)	Rent Owing	\$1997.13
b)	Late Fees	75.00
c)	Hearing Expenses	<u>70.00</u>
d)	Total Owing to the Landlord	<u>\$2142.13</u>

14 October 2020

Date



Michael Greene
Residential Tenancies Tribunal