

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0041-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **16 March 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as landlord1 participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], hereafter referred to as landlord2 did not participate in the hearing. (*Absent and Not Represented*)
4. The respondent, [REDACTED], hereafter referred to as the tenant did not participate in the hearing. (*Absent and Not Represented*)
5. The details of the claim were presented as a written fixed term agreement set to expire on 30 September 2021 and rent set at \$600.00 per month with utilities extra and rent was due on the 1st of each month. A security deposit in the amount of \$450.00 was collected on or about 23 September 2020 and remains with the landlord.
6. In a proceeding under the *Residential Tenancies Act, 2018*, 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

7. 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 landlords show that the tenant was served with the notice of this hearing on the **01 March 2021** by serving the original documents to the tenant by email to the address [REDACTED] and supplying the verification of the email.

A phone call to the tenant at [REDACTED] and there was no answer at this number.

8. 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 applicants, I proceeded in the tenant's absence.

Issues before the Tribunal

9. The landlords are seeking the following:
 - a) Rent Owing **\$1200.00**;
 - b) Damages **\$316.24**;
 - c) Late Fees **\$75.00**;
 - d) Other (NSF) **\$50.00**;
 - e) Hearing Expenses;
 - f) Application of Security Deposit

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are:
 - a. *Policy 12-1: Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF, and;*
 - b. *Policy 9-2 Claims and Counter Claims, and;*
 - c. *Policy 9-3 Claims for Damage to Rental premises.*

Issue 1: Compensation for Damages - \$316.24

Relevant Submissions

Landlord Position

12. Landlord1 testified that when the property was recovered it was noticed that the following items were damaged as outlined:
 - a. Cleaning required
 - b. Items removed to the landfill
 - c. Replace broken shoe rack
13. Landlord1 submitted photos of the property (**Exhibit L # 3 - Damages**) and (**Exhibit L # 10 – Move in photos**) along with the breakdown of the damage claim (**Exhibit L # 4**), invoice for cleaning supplies (**Exhibit L # 5**), and an invoice for a replacement shoe rack (**Exhibit L # 6**).
14. Landlord1 testified that the tenant did not maintain the property in a clean state of repair which made it difficult for them to re-rent the property quickly. Landlord1 stated that the smell of sweat and body odor was overpowering.
15. Landlord1 indicated that the tenant left some items that had to be discarded and for this the landlords are claiming 3 hours labor @ \$19.40/hr (**\$58.20**) plus **\$20.00** for fuel for the borrowed truck to haul the items away.
16. Landlord1 is further claiming for self-labor to clean the property in the amount of **\$155.20** (4 hours for two people at the self-labor rate of \$19.40/hr. Landlord1 referred to the photos of the property to identify the need for the cleaning and supplied the supplies from personal stock in the amount of **\$62.84**).
17. Landlord1 went on to testify that the tenant broke a shoe rack that was in the property and is seeking compensation for its replacement. Landlord1 referred to photos again of the damaged unit (**Exhibit L # 3**) and referred to the receipt from Wal-Mart (**Exhibit L # 6**) for the replacement unit in the amount of \$12.47 + HST = **\$14.34**.

Analysis

18. I have reviewed the testimony and evidence of the landlord in this portion of the claim. The landlord applicants are 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

19. Landlord1 has demonstrated the condition of the property with photos/videos (**Exhibit L # 10**) of the property taken before the tenant moved into the unit. The move out photos show an unclean apartment but not an apartment that was destroyed or damaged that would have caused the need for extensive repair. The landlords have claimed for the cleaning of the property (4 hours at \$19.40/hour) and I find this to be reasonable. Additionally, the landlords are claiming for 3 hours to remove a mattress and bed frame to the landfill and this too is reasonable after examining the evidence photos taken after the tenant vacated. I will note here that the landlords presented several photos of the property while the tenant was living in the unit that shows a messy apartment. These photos do not enter into the decision respective of damages as the tenant hadn't moved out at that point.
20. In respect of cleaning (Labor and supplies) and item removal, I find the landlords claim is reasonable and I award the landlord the following:
- | | |
|-----------------------|------------------------|
| a. Cleaning labor: | \$155.20 |
| b. Cleaning Supplies: | 68.24 |
| c. Garbage Removal: | <u>78.20</u> |
| d. Total: | <u>\$301.64</u> |
21. Landlord1 have further demonstrated that there was a shoe rack in the property at the onset of the tenancy and at the conclusion, it was destroyed. Landlord1 indicated that they were able to find an identical rack (**Exhibit L #6**) and it was actually less than what they had originally purchased it for. Landlord1 stated that it was priced at \$12.47 + HST = **\$14.34**. I find the tenant responsible for the replacement of the broken show rack at the cost of \$14.34.

Decision

22. The landlords' claim for damages succeeds in the amount of **\$315.98** (\$301.64 + \$14.34).

Issue 2: Rent Owning - \$1200.00

Relevant Submissions

Landlord Position

23. Landlord1 testified that they are seeking **\$1200.00** as rent owed for the period of 01 November 2020 to 31 December 2020.
24. Landlord1 testified that the tenant occupied the property on 01 October 2020 and paid the rent for the first month. As a part of the normal business practice, the landlords collected 12 postdated cheques from the tenant and deposited the November 2020 rent on 01 November 2020. Landlord1 stated that they received notification from their bank on 09 November that there was not sufficient funds in the tenant's account for the cheque (NSF) (**Exhibit L # 7**).

25. Landlord1 stated that they attempted to recover the funds from the tenant and received only promises from the tenant and therefore terminated the tenancy on 10 November 2020 for the termination date of 21 November 2020 under section 19 (**Exhibit L # 9**).
26. The landlords began to show the property and was met with an extremely unclean property which smelled and could not be shown.
27. The landlords are seeking rent for November in the amount of \$600.00 and rent for December in the amount of \$600.00 as the property could not be rented for December because of the condition the property was left in by the tenant.
28. Landlord1 submitted a copy of the rental agreement (**Exhibit L # 2**) and a copy of the rental Ledger (**Exhibit L # 1**) as evidence in this matter.

Analysis

29. 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 landlords actually owed by the tenant.
30. With respect to the arrears being claimed, I agree with the landlords 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 30 November has not been paid leaving a balance of **\$600.00**.
31. Further, rent for December 2020 can only be awarded if the landlords can substantiate that the landlords were unable to re-rent the property as a direct result of the negligence of the tenant. The damages claim above shows that the tenant did leave the property unclean but not such that would hinder the re-renting of the property. The landlords have only claimed for 4 hours labor and recovered the property on 21 November 2020. It is normal to award rent only up to and including the day the landlords recover the unit when the tenancy is terminated by the landlords. In this matter, the landlords had 9 days remaining in November to correct the cleanliness issue, which is sufficient. As such, I find that the landlords' claim for rent owing for December fails.

Decision

32. The landlords' total claim for rent succeeds as follows:
 - a) Rent owing up to 30 November 2020 \$600.00
 - b) Total due to Landlords..... \$600.00**

Issue 3: Payment of Late Fees - \$75.00

Landlord Position

33. The landlords are seeking payment of late fees as a result of the tenant's failure to pay rent on time.
34. Landlord1 testified that the tenant has been in arrears on an ongoing basis since November 2020. The landlord1 indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

35. Established by undisputed fact above, the tenant was in arrears since November 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.
36. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlords.

Decision

37. The landlords' claim for late fees succeeds in the amount of the maximum allowable of \$75.00.

Issue 4: NSF Fee - \$50.00

Landlord Position

38. Landlord1 is seeking payment of a Non-sufficient Funds (NSF) fee as outlined in the rental agreement in the amount of \$50.00. Landlord1 submitted a copy of the NSF cheque from the bank (**Exhibit L # 7**) which shows \$0.00 charged for the NSF item.

Analysis

39. I have reviewed the testimony and evidence of the landlord in this portion of the claim.

40. The *Residential Tenancies Act, 2018* section 15(2) clearly establishes the fees permitted to be assessed by a landlord respective of NSF items and reads:

Fee for failure to pay rent

15. (2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

41. As the landlords were not levied a fee by his financial institution, then no fee can be levied against the tenant. As such, the landlords' claim for an NSF fee fails.

Decision

42. The landlords' claim for an NSF fee fails.

Issue 5: Application/Refund of Security Deposit

Landlord Position

43. Landlord1 testified that a security deposit in the amount of \$450.00 was paid on the property on or about 23 September 2020. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.
44. Landlord1 acknowledges holding the security deposit in the amount of \$450.00.

Analysis

45. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$450.00.
46. The landlords' claim has been successful as indicated above. The security deposit plus accrued interest is \$450.00 as the interest rate for 2020 – 2021 is set at 0%.
47. The security deposit is an asset of the tenant's to be held against any loss incurred by the landlords attributed to the tenancy. In this matter it has been determined that there was attributable loss and as such, the landlords are entitled to offset the security deposit against a demonstrated loss as outlined in the attached order.

Decision

48. As the landlords' claim above has been successful, the landlords shall offset the security deposit as outlined in the attached order.

