

Residential Tenancies Tribunal

Decision 19-0012-04

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:00 am (Labrador Time) on 17 September 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The landlord, [REDACTED], hereafter referred to as landlord, participated in the hearing and was represented by [REDACTED] (*Affirmed*).
3. The tenant, [REDACTED], hereafter referred to as tenant, did not participate in the hearing.
4. The details of the claim were presented as a written term rental agreement set to expire on 30 June 2018 with rent set at \$500.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$250.00 was collected on or about 30 June 2017 and the landlord issued a termination notice under section 18 of the *Residential Tenancies Act, 2000*. The tenant vacated the property on or about 14 August 2018.
5. 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

6. 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 **30 August 2019** by serving the documents to the tenant personally at [REDACTED] and the tenant has had **16 days** to provide a response.

There was no contact information on file for the tenant to attempt a call prior to commencing the hearing.

7. 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

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$2100.00**;
 - b) Payment of Utilities **\$592.10**;
 - c) Application of Security Deposit
 - d) Hearing expenses.

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:
 - a. Sections 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 9-2 Claims and Counter Claims*, and;

Issue 1: Rent Owing - \$2100.00

Relevant Submissions

Landlord Position

11. The landlord stated that they had entered into a verbal rental agreement with the tenants, commencing 01 July 2017. The agreed rent was set at \$500.00 per month and due on the 1st day of each month with a security deposit in the amount of \$250.00 collected on this tenancy on or about 30 June 2017. The landlord issued a termination notice under section 18 of the *Residential Tenancies Act, 2000* and the tenant vacated on or about 14 August 2018. The landlord further stated that the last payment of rent was received from the tenant on or about 07 May 2018 (**Exhibit L # 2**) leaving a balance outstanding in the amount of \$2100.00 up to and including 31 August 2018. The landlord additionally stated that as of the hearing date 17 September 2019, rent remains outstanding.

Analysis

12. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one 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 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 rental agreement established when the tenancy began. Records are clear that rent owing up to 31 July 2018 is \$1600.00. Rent for the month of August is calculated up to an including the day the tenant vacated the property (14 August 2018) as the landlord terminated the tenancy. Rent for August is owed in the amount of \$230.16 calculated as $(\$500.00 \times 12 = \$6000.00 \div 365 \text{ days} = \$16.44/\text{day} \times 14 \text{ days} = \$230.16)$.

Decision

14. The landlord's total claim for rent succeeds as follows:
- | | |
|--|-------------------------|
| a) Rent owing up to 31 July 2018..... | \$1600.00 |
| b) Rent owing for August 1 – 14, 2018..... | <u>230.16</u> |
| c) Total Arrears | <u>\$1830.16</u> |

Issue 2: Utilities - \$592.10

Relevant Submissions

Landlord Position

15. The landlord stated that all their units are “Pay Own Utilities”. She stated that the tenant failed to change over the Hydro Account into the tenants name and to keep the power on in the northern climate, the landlord continued to pay the invoices. The landlord submitted a copy of the rental agreement (Exhibit L # 1) to establish that the electrical was the responsibility of the tenant. Further the landlord submitted a printout from NL Hydro (Exhibit L # 4) for the billing of the rented premises in the amount of \$592.10 for the period 02 June 2017 – 01 August 2018. The landlord testified that this cost should be the responsibility of the tenant and is claiming this charge for the utilities.

Analysis

16. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the utilities that is being claimed by the landlord actually owed by the tenant.
17. With respect to the utilities being claimed, I agree with the landlord that the responsibility of the utilities for the property are that of the tenant. Utilities are required to be paid by the tenant for the period of use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Records show that the billing for the first period is from 02 June 2017 to 04 July 2017 in the amount of \$20.22. This period would have been outside the rental period and as such not claimable. The balance of the Hydro invoice is within the claimable period and totals \$571.88. I find the tenant responsible for the utilities in the amount of **\$571.88** covering the period 05 July 2017 to 01 August 2018 as documented in Exhibit L # 4.

Decision

18. The landlord’s claim for utilities succeeds in the amount of \$571.88.

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 [REDACTED] (**Exhibit L # 5**). The landlord is seeking this cost.

Analysis

20. 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

21. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Issue 4: Application of Security Deposit

Landlord Position

22. The landlord testified that a security deposit in the amount of \$250.00 was paid on the property on or about 30 June 2017. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Analysis

23. Established by undisputed facts above, the tenant did pay a security deposit to the landlord in the amount of \$250.00. The landlord's claim has been successful and the tenant owes the landlord for rent, utilities and hearing expenses. The interest rate set out by the Minister on security deposits for 2017 and 2018 is set at 0%. The security deposit plus accrued interest then is \$250.00.

Decision

24. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held against any amount outstanding as directed in the attached order.

Summary of Decision

25. The landlord is entitled to the following:

a)	Rent Owing	\$1830.16
b)	Utilities	571.88
c)	Hearing Expenses	<u>\$20.00</u>
d)	Sub-total	\$2422.04
e)	Less: Security Deposit	(\$250.00)
f)	Total owing to Landlord	\$2172.04

October 30, 2019

Date



Michael Greene
Residential Tenancies Tribunal