

Residential Tenancies Tribunal

Decision 19-0014-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:15 am on 30 April 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, did not participate 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 31 July 2019 with rent set at \$950.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$671.25 was collected on or about 10 June 2018 and the tenant issued a termination notice dated 07 October 2018 for the intended termination date of 01 November 2018 with no section of the legislation indicated.
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 **28 March 2019** by serving the documents to the tenant personally at [REDACTED] and the tenant has had **33 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 **\$1900.00**;
 - b) Payment of late fees **\$63.00**;
 - c) Payment of Utilities **\$13.05**;
 - d) Cleaning Expense **\$75.00**;
 - e) 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;
 - d. *Policy 9-3 Claims for Damage to Rental premises*.

Issue 1: Rent Owing - \$1900.00

Relevant Submissions

Landlord Position

11. The landlord stated that they had entered into a verbal rental agreement with the tenants, commencing June 1, 2018. The agreed rent was set at \$950.00 per month and due on the 1st day of each month with a security deposit in the amount of \$671.25 collected on this tenancy on or about 10 June 2018. The landlord issued a termination notice (Exhibit L # 3) on 07 October 2018 for the intended date of 01 November 2018. The landlord stated that the tenant vacated the property on or about 01 November 2018. The landlord further stated that no rent was received from the tenant for September and October 2018 with the balance outstanding being \$1900.00 up to and including 31 October 2018. The landlord additionally stated that as of the hearing date 30 April 2019, rent remains outstanding.

Analysis

12. I have reviewed the testimony and evidence of the landlord and tenants 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 tenants.
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 for September and October 2018 came due on the first of each month and were never paid. I find that based on the records provided, the tenant owes rent in the amount of **\$1900.00** covering the period up to 31 October 2018.

Decision

14. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 31 October 2018..... \$1900.00
 - b) Total Arrears \$1900.00

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

15. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
16. The landlord testified that the tenants have been in arrears since September 1, 2018. The landlord indicated that they are seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018* and the tenants have been in arrears since January 1, 2019.

Analysis

17. Established by undisputed fact above, the tenant was in arrears for the months of September and October 2018. 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.
18. Any calculated amount would exceed the maximum allowable under regulations and as such would permit a claim of \$75.00.
19. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

20. The landlord's claim for late fees succeeds in the amount of \$75.00 as any calculated amount would exceed the maximum allowable.

Issue 3: Utilities - \$13.05

Relevant Submissions

Landlord Position

21. The landlord stated that they had received an invoice from NL Power (Exhibit L # 4) in the amount of \$13.05. The tenant had the meter read on 25 October 2018 and remained in the unit until the last of the month. The landlord testified that this cost should be the responsibility of the tenant and is claiming this charge for the utilities.

Analysis

22. 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.
23. With respect to the utilities being claimed, I agree with the landlord that this charge is the responsibility 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 are clear that the tenant had the meter read by NL Power of 25 October 2018 which would have reverted the power back to the landlord for the remaining occupation of the tenant. This would be contradictory to article 6f of the rental contract (Exhibit L # 1). I find that based on the records provided, the tenant owes utilities in the amount of **\$13.05** covering the period up to 01 November 2018.

Decision

24. The landlord's claim for utilities succeeds in the amount of \$13.05.

Issue 4: Cleaning - \$75.00

Relevant Submissions

Landlord Position

25. The landlord stated that there was a requirement to cleaning the property after the tenant vacated the unit. The landlord submitted into evidence a copy of the invoice from the cleaning company – Amanda's House Cleaning Services (**Exhibit L # 5**) in the amount of \$75.00 and stated that there were no photos of the unit which would demonstrate the necessity for the cleaning to be done.

Analysis

26. 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) was there a requirement to clean the unit after the tenant vacated and was the tenant liable for the claimed damages.
27. With respect to the cleaning being claimed, the landlord is required to show on the balance of probabilities that the item being claimed is the responsibility of the tenant, that the claimed damage actually exists and a valuation for the

remediation. In this claim the landlord has failed to establish that the damages actually exists or there was an actual requirement to have cleaners remediate the property. As such, I find that the landlord has failed to adequately substantiate their claim for cleaning expenses and as a result the claim fails.

Decision

28. The landlord's claim for cleaning expenses fails.

Issue 5: Hearing Expenses

Landlord Position

29. 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 # 6**). The landlord is seeking this cost.

Analysis

30. 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

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

Issue 6: Application of Security Deposit

Landlord Position

32. The landlord testified that a security deposit in the amount of \$671.25 was paid on the property on or about 10 June 2018. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Analysis

33. Established by undisputed facts above, the tenant did pay a security deposit to the landlord in the amount of \$671.25. The landlord's claim has been successful and the tenant owes the landlord for rent, utilities, late fees and hearing expenses. The interest rate set out by the Minister on security deposits for 2018 and 2019 is set at 0%. The security deposit plus accrued interest then is \$671.25.

Decision

34. 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

35. The landlord is entitled to the following:

a)	Rent Owing	\$1900.00
b)	Late Fees	75.00
c)	Utilities	13.05
d)	Cleaning.....	0.00
e)	Hearing Expenses	\$20.00
f)	Sub-total	\$2008.05
g)	Less: Security Deposit	(\$671.25)
h)	Total owing to Landlord	\$1336.80

28 October 2019

Date


Michael Greene
Residential Tenancies Tribunal