

Residential Tenancies Tribunal

Decision 19-0015-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:45 pm on 26 June 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 (*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 monthly rental agreement with rent set at \$800.00 per month and due on the 1st of each month. It was stated that no security deposit was collected on this tenancy. The landlord testified that a termination notice dated 07 October 2018 for the intended termination date of 01 November 2018 under section 19 was issued by the landlord.
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 **18 May 2019** (*served after 4:00 pm on May 17*) by serving the documents to the tenant electronically to the email address [REDACTED] and providing:

- 1) A copy of the email showing the attached documents
- 2) A copy of email correspondence between the landlord and tenant after the tenant vacated establishing the email address as a valid communication avenue.

The tenant has had **38 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 **\$1200.00**;
 - b) Payment of Utilities **\$135.00**;
 - c) 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;

Issue 1: Rent Owing - \$1200.00

Relevant Submissions

Landlord Position

11. The landlord stated that they had entered into a written monthly rental agreement with the tenant, commencing 01 August 2018. The agreed rent was set at \$800.00 per month and due on the 1st day of each month with no security deposit collected on this tenancy. The landlord issued a termination notice (**Exhibit L # 4**) on 03 February 2019 for the intended date of 14 February 2019. The landlord stated that the tenant vacated the property on or about 15 April 2019. The landlord further stated that the tenant was consistently delinquent with rent payment and that she tried to work with him to no avail. The landlord supplied rental records (**Exhibit L # 2**) to demonstrate the arrears. The landlord testified that she set up a repayment schedules with the tenant to get him back on track, but he failed to fulfill the agreement. The landlord testified that the last payment received from the tenant was May 21, 2019 in the amount of \$725.00. The landlord additionally stated that as of the hearing date 26 June 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 was owing and paid sporadically by the tenant. The below Table outlines the amounts owed as extracted from the landlord's rental records submitted into evidence:

Table # 1: Rental Records

| Date | Comment | Due | Payment | Balance |
|-----------|-------------------------------|-----------|-----------|--------------|
| | Bal. Forward from 31 Jan 2019 | \$ - | \$ - | \$0.00 |
| 1-Feb-19 | Rent Due | \$ 445.00 | | (\$445.00) |
| 15-Feb-19 | Rent Due | \$ 445.00 | | (\$890.00) |
| 1-Mar-19 | Rent Due | \$ 445.00 | | (\$1,335.00) |
| 8-Mar-19 | Rent Payment | | \$ 500.00 | (\$835.00) |
| 15-Mar-19 | Rent Due | \$ 445.00 | | (\$1,280.00) |
| 21-Mar-19 | Rent Payment | | \$ 725.00 | (\$555.00) |
| 1-Apr-19 | Rent Due | \$ 445.00 | | (\$1,000.00) |

14. I find that based on the records provided (as extracted above), the tenant owes rent in the amount of **\$1000.00** covering the period up to 15 April 2019 which is the date the landlord terminated the tenancy.

Decision

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

- a) Rent owing up to 15 April 2019 \$1000.00
- b) Total Arrears \$1000.00

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

- 16. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
- 17. The landlord indicated that she is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018* and the tenant has been in arrears since January 1, 2019.

Analysis

18. Established by undisputed fact above, the tenant was in arrears beginning February 2019 to the termination of the tenancy (15 April 2019). 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.
19. Any calculated amount would exceed the maximum allowable under regulations and as such would permit a claim of \$75.00.
20. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

21. 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 - \$135.00

Relevant Submissions

Landlord Position

22. The landlord stated that the tenant was paying \$90.00 per month for cable and internet under an account belonging to the landlord. The landlord submitted a statement from Bell Aliant (Exhibit L # 3) and is claiming for 6 weeks at \$135.00. The landlord stated that the tenant did not pay for the last 6 weeks.

Analysis

23. 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 (cable/internet) that is being claimed by the landlord actually owed by the tenant.
24. With respect to the utilities being claimed, the evidence supplied by the landlord does not amount to an invoice or statement of amounts outstanding. It shows an amount previously paid but does not define the time period. It does not outline a charge for current services but only outlines which services are included in the bundle package. In addition, the landlord has supplied only the front and signature page of the rental agreement (**Exhibit L # 1**) thereby making it impossible to determine if cable/internet are included or separate from the rental

charges. I find that the landlord has failed to substantiate this portion of the claim with supporting evidence and as such, this portion of the claim fails.

Decision

25. The landlord’s claim for utilities fails.

Issue 5: Hearing Expenses

Landlord Position

26. 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

27. 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

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

Summary of Decision

29. The landlord is entitled to the following:

- a) Rent Owing\$1000.00
- b) Hearing Expenses \$20.00
- c) **Total owing to Landlord\$1020.00**

November 1, 2019

Date

[REDACTED]

Michael Greene
Residential Tenancies Tribunal