

## Residential Tenancies Tribunal

Decision 19-0021-01

Michael Greene  
Adjudicator

---

### Introduction

1. The hearing was called at 9:50 am on 09 April 2019 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 landlord, participated in the hearing and was represented by [REDACTED].
3. The respondent, [REDACTED], hereafter referred to as tenant, did not participate in the hearing.
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. The application was AMENDED at the hearing to remove the request for vacant possession as the tenant vacated the unit on or before the termination date of 31 March 2019.
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 **29 March 2019** by serving the documents to the tenant personally at the rented premises and the tenant has had **10 days** to provide a response.

A phone call was placed to the tenant's phone number [REDACTED] with no answer. A message was left on the message manager to contact the hearing at the conferencing numbers on the hearing documents served by the landlord.

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 **\$1681.50**;
  - b) Payment of late fees
  - 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 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 - \$1681.50**

#### **Relevant Submissions**

##### Landlord Position

11. The landlord stated that he had entered into a six month fixed term rental agreement (Exhibit L # 1) with the tenant which has since converted to a month to month tenancy. The agreed rent is set at \$790.00 per month and due on the

1<sup>st</sup> day of each month with a security deposit in the amount of \$590.00 collected on this tenancy on or about February 2, 2018. The landlord stated that the tenant had accumulated a small amount of arrears prior to the last two months. For the month of February and March 2019, no rent has been paid and thereby leaving a balance outstanding in the amount of \$1681.50 as of the hearing date. The landlord demonstrated the arrears with rental records (Exhibit L # 2) showing the total rent outstanding as \$1681.50 up to and including 31 March 2019. The landlord stated as of the hearing date 09 April 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 1 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 written rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 March 2019 has not been paid leaving a balance of **\$1681.50** (Exhibit L # 2). The landlord has not assessed any rent owing beyond March 31, 2019 as the tenant vacated on the termination notice issued by the landlord (Exhibit L # 3).

## Decision

14. The landlord's total claim for rent succeeds as follows:
  - a) Rent owing (for the period ending March 31, 2019) ..... \$1681.50
  - b) **Total Owing..... \$1681.50**

## Issue 2: Payment of Late Fees - \$75.00

### Landlord Position

15. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
16. The landlord testified that the tenant has carried arrears since May 2018. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

## Analysis

17. Established by undisputed fact in paragraph 13, the tenant was in arrears since May 2018. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. The landlord is seeking a late fees in the amount of the maximum allowable under regulations in the amount of \$75.00.
18. The issue of rental arrears has been determined in paragraph 13 above confirming that the tenant owes rent to the landlord.
19. Any calculated amount of late fees will no doubt exceed the maximum allowable of \$75.00.

## Decision

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

## Issue 3: Hearing Expenses

### Landlord Position

21. 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 # 4). The landlord is seeking this cost.

## Analysis

22. 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

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

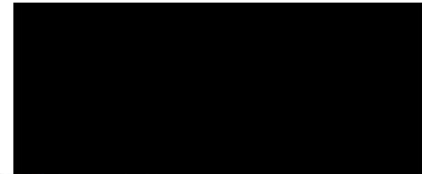
## Summary of Decision

24. The landlord is entitled to the following:

a)	Rent Owing .....	\$1681.50
b)	Late Fees .....	75.00
c)	Hearing Expenses .....	<u>\$20.00</u>
d)	<b>Total Owing to the Landlord .....</b>	<b>\$1776.50</b>

April 24, 2019

**Date**



**Michael Greene**  
**Residential Tenancies Tribunal**