

## Residential Tenancies Tribunal

Decision 19-0021-03

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 9:30 am on 25 March 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as landlord1, participated in the hearing. (*Sworn*)
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing. (*Sworn*)
4. The respondent, [REDACTED], hereafter referred to as tenant1 participated in the hearing. (*Sworn*)
5. The respondent, [REDACTED], hereafter referred to as tenant2 participated in the hearing. (*Sworn*)
6. The details of the claim were presented as a written monthly rental agreement with rent set at \$1500.00 per month inclusive of utilities and due on the 1<sup>st</sup> of each month. It was stated that no security deposit was collected on this tenancy. The landlord issued a termination notice dated 03 January 2019 for the intended termination date of 13 Jan 2019 under Section 19 of the *Residential Tenancies Act, 2018* via text message to (709-640-9915).
7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicants have 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 applicants have to establish that his/her account of events are more likely than not to have happened.

## Preliminary Matters

8. Landlord1 amended the application at the onset of the hearing to include a second landlord, [REDACTED], whom was agreeable to be added to the file.
9. The landlords amended the application at the onset of the hearing to include a second tenant, [REDACTED], whom was agreeable to be added to the file.
10. The affidavit submitted by the landlords show that tenant1 was served with the notice of this hearing on the **05 March 2019** by serving the application for dispute resolution document electronically to the number [REDACTED] which is how the parties communicated. Tenant1 acknowledged receipt of the claim and appeared at the scheduled hearing.

## Issues before the Tribunal

11. The landlords are seeking the following:
  - a) Vacant possession of the rented premises
  - b) Payment of rent owing **\$2350.00**
  - c) Compensation for Utilities **\$206.00**
  - d) Hearing expenses

## Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. 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 Owning - \$2350.00

### Relevant Submissions

#### Landlord Position

14. Landlord1 stated that they entered into a written monthly rental agreement with the tenants, commencing 01 December 2018 for the upper level apartment at [REDACTED]. The agreed rent was set at \$1500.00 per month with utilities included and due on the 1<sup>st</sup> day of each month. Internet was considered extra and payable to the landlords and no security deposit was

collected on this tenancy in lieu of the tenants cleaning the property. The landlords issued a termination notice on 03 January 2019 for the intended date of 13 January 2019 (copy not submitted) but indicated that the tenants vacated on or about 08 January 2019. Landlord1 testified that they received a payment from the tenants on or about 18 January 2019 in the amount of \$350.00 towards the amount outstanding. Landlord1 stated that rent is outstanding in the amount of \$2350.00 for the period ending 31 January 2019 and stated as of the hearing date 25 March 2019 rent remains outstanding. Landlord1 referred to the text message communication (**Exhibit L # 3**) to substantiate that the tenants acknowledged owing rent.

15. Landlord1 testified that the property required cleaning and they had worked out a deal with the tenants to clean the property and they would deduct December's rent by \$250.00 and waive the payment of the security deposit in the amount of \$350.00 as compensation for cleaning the property.

### Tenant Position

16. The tenants in this matter dispute the amount of rent owed. Tenant1 testified that a payment of \$1000.00 cash was made to the landlords on or about November 25-28, 2018 and no receipt was provided for this payment.

### **Analysis**

17. I have reviewed the testimony and evidence of the landlords 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 landlords actually owed by the tenants.
18. With respect to the arrears being claimed, I agree with the landlord that rent is owed. I do not accept the tenants' position that a payment of \$1000.00 was made in cash on or about 25 November 2018. The communication between the landlords and tenants (Exhibit L # 3) does not reference any such payment until notification of the hearing was provided. I would have expected earlier reference to such a large payment especially when the relationship started to go south. Rent is required to be paid by the tenants for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. It has been presented that the landlord terminated the tenancy for 13 January 2019 and the tenants vacated on 08 January 2019 as per direction of this notice. As the landlords terminated the tenancy, they are not entitled to any rent beyond the date the tenants vacated the property.

19. Records show that rent for the period ending 31 December 2018 is outstanding in the amount of **\$1250.00**. Rent for the Month of January 2019 can only be awarded up to and including the termination date (13 January 2019) or the date the tenants vacate the property (08 January 2019) and is calculated as (\$1500.00 X 12 months = \$18000.00 ÷ 365 days = \$49.32 per day X 8 days = \$394.56). Rent for January 1 – 8, 2019 then is **\$394.56**.

## Decision

20. The landlords' total claim for rent succeeds as follows:

a) Rent owing up to 31 December 2018 .....	\$1250.00
b) Rent owing for January 1 – 8, 2019 .....	<u>394.56</u>
c) Sub-total.....	\$1644.56
d) LESS: Tenants Payment (18 January 2019) .....	<u>(\$350.00)</u>
e) Total Arrears .....	<u><b>\$1294.56</b></u>

## Issue 2: Payment of Internet - \$206.00

### Landlord Position

21. The landlords are seeking payment of internet charges as a result of the tenants' failure to pay these charges on time.
22. The landlords testified that the tenants requested that the landlords install the internet at the property and she would pay the landlords for the service. The landlords referred to the communications (**Exhibit L # 3**) to this effect. There were no invoices presented from Bell for the internet services supplied.

### Tenant Position

23. The tenants did acknowledge that the internet was extra at \$103 per month.

## Analysis

24. The landlords' claim amounts to 2 months of internet service for the months of December 2018 and January 2019 at a rate of \$103 per month. The communications between the parties does indicate an agreement of payment for an amount outstanding which would include the internet costs. Additionally, there is an indication that the tenants does thank the landlords for connecting the internet for them. I accept this as an acknowledgement on the tenants' behalf that a requirement of the payment for the internet service was accepted. The landlords have indicated that they have claimed for the base rate at \$103 per

month but has not provided any receipts or invoices for these charges. The costs associated with these services fluctuate regularly and it would be unjust and unfair to levy a fee against tenants without documented evidence of the costs incurred. As such, the landlords' claim for internet charges fails.

**Decision**

25. The landlords' claim for internet charges fails.

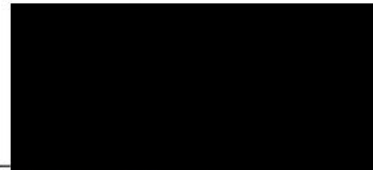
**Summary of Decision**

26. The landlords are entitled to the following:

- a) Rent Owing (up to and including 08 June 2019).....\$1294.56
- b) Total owing to Landlords .....\$1294.56**

20 June 2019

**Date**



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