

## Residential Tenancies Tribunal

Decision 19-0053-01

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:30 pm on 01 October 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Conferencing System.
2. The landlord, [REDACTED], hereafter referred to as landlord1, participated in the hearing (*Affirmed*).
3. The landlord, [REDACTED], hereafter referred to as landlord2, did not participate in the hearing (*Absent and Not Represented*).
4. The tenant, [REDACTED], hereafter referred to as tenant1, did not participate in the hearing.
5. The tenant, [REDACTED], hereafter referred to as tenant2, did not participate in the hearing.
6. The details of the claim were presented as a written monthly rental agreement with rent set at \$600.00 per month and due on the 1<sup>st</sup> of each month. It was stated that a security deposit in the amount of \$300.00 was collected on or about 13 September 2017 and the landlords issued a termination notice under section 19 of the *Residential Tenancies Act, 2018*. The tenants vacated the property on or about 24 August 2019.
7. 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

8. The tenants, [REDACTED], were 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 landlords show that the tenants **JP & PN** were served with the notice of this hearing on the **08 August 2019** by serving the documents to the tenant **JP** personally at [REDACTED] and the tenants have had **48 days** to provide a response.

A phone call was placed to the number on file [REDACTED] with no answer. A message was left to contact the conference if interested in participating.

9. As the tenants were properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlords applicants, I proceeded in the tenants' absence.
10. Landlord1 amended the claim to remove the request for Vacant Possession as the tenants vacated the property on or about 24 August 2019.
11. Landlord1 further amended the claim to add rent for August 2019 which came due since the filing of the application.

## Issues before the Tribunal

12. The landlords are seeking the following:
  - a) Payment of rent owing **\$2942.00**;
  - b) Application of Security Deposit
  - c) Hearing expenses.

## Legislation and Policy

13. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
14. 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 - \$2942.00

### Relevant Submissions

#### Landlord Position

15. Landlord1 stated that they had entered into a written rental agreement with the tenants, commencing 01 November 2017. The agreed rent was set at \$600.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$300.00 collected on this tenancy on or about 31 August 2017. The landlords issued a termination notice on 19 July 2019 for the intended termination date of 31 July 2019 under section 19 of the *Residential Tenancies Act, 2018*. The tenants vacated on or about 24 August 2019. Landlord1 further stated that the last payment of rent was received from the tenants on or about 24 May 2019 (**Exhibit L # 2**) in the amount of \$1000.00. Landlord1 testified that as of the hearing date 01 October 2019, rent remains outstanding in the amount of \$2942.00 for the period ending 31 August 2019.

### Analysis

16. I have reviewed the testimony and evidence of the landlords 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.
17. With respect to the arrears being claimed, I agree with the landlord that rent is owed. 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. Records are clear that rent owing up to 31 July 2019 is **\$2342.00**. Rent for the Month of August 2019 can only be awarded up to and including the day the tenants vacated which was August 24, 2019 and is calculated as ( $\$600.00 \times 12 \text{ months} = \$7200.00 \div 365 \text{ days} = \$19.73 \text{ per day} \times 24 \text{ days} = \$473.52$ ). Rent for August 1 – 24, 2019 then is **\$473.52**.

**Decision**

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

- a) Rent owing up to 31 July 2019 ..... \$2342.00
- b) Rent for the period (August 1 – 24, 2019) ..... 473.52
  
- c) Total Arrears ..... **\$2815.52**

**Issue 2: Hearing Expenses**

Landlord Position

19. The landlords 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 landlords are seeking this cost.

**Analysis**

20. I have reviewed the testimony and evidence of Landlord1 in this matter. The expenses incurred by the landlords 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 tenants are responsible to cover these reasonable expenses.

**Decision**

21. The tenants shall pay the reasonable expenses of the landlords in the amount of \$20.00.

**Issue 3: Application of Security Deposit**

Landlord Position

22. Landlord1 testified that a security deposit in the amount of \$300.00 was paid on the property on or about 13 September 2017. The landlords are seeking permission to apply the security deposit against the order issued by the tribunal.

**Analysis**

23. Established by undisputed facts above, the tenants did pay a security deposit to the landlords in the amount of \$300.00. The landlords' claim has been successful and the tenants owe the landlords for rent and hearing expenses. The interest rate set out by the Minister on security deposits for 2017 - 2019 is set at 0%. The security deposit plus accrued interest then is \$300.00.

**Decision**

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

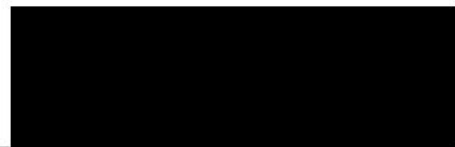
**Summary of Decision**

25. The landlords are entitled to the following:

a)	Rent Owing .....	\$2815.52
b)	Hearing Expenses .....	<u>\$20.00</u>
c)	<b>Sub-total</b> .....	<b>\$2835.52</b>
d)	<b>Less: Security Deposit</b> .....	<b><u>(\$300.00)</u></b>
e)	<b>Total owing to Landlords</b> .....	<b><u>\$2535.52</u></b>

10 February 2020

**Date**



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