

Residential Tenancies Tribunal

Decision 19-0055-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 10:30 am on 14 June 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via tele-conference to Mt. Pearl Residential Tenancies Office, 149 Smallwood Drive, Mt. Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as landlord1, participated in the hearing (*affirmed*).
3. The applicant, [REDACTED], hereafter referred to as landlord2, did not participate in the hearing.
4. The respondent, [REDACTED], hereafter referred to as tenant1 did not participate in the hearing.
5. The respondent, [REDACTED], hereafter referred to as tenant2 did not participate in the hearing.
6. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$600.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$400.00 was collected on the tenancy on or about 10 February 2019. The landlord issued a termination notice dated 28 May 2019 for the intended termination date of 08 June 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
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 tenant1 was served with the notice of this hearing on the **03 June 2019** by serving the application for dispute resolution document personally to tenant1 at the rental unit address.

The affidavit submitted by the landlord shows that tenant 2 was served with the notice of this hearing on the **03 June 2019** by serving the application for dispute resolution document to tenant1 who is 16 years of age or older and lives with tenant2.

Both tenants have had **10 days** to provide a response.

There was no contact information to attempt contact with the tenants prior to the start of the hearing.

As the tenants were properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicants, I proceeded with the hearing.

9. Landlord1 amended the claim at the hearing to:
 - a. Change the spelling of the first name of landlord2 to read "[REDACTED]".
 - b. Increase rent being claimed to \$1200.00 up to June 30, 2019.
10. Landlord1 amended the claim **after the hearing** to:
 - a. Remove the need for a Vacant Possession Order as the tenants vacated the property. The landlord recovered the property by posting an abandonment notice on 14 June 2019 and recovering it on 15 June 2019 at 11:30 am.

Issues before the Tribunal

11. The landlords are seeking the following:
 - a) Payment of rent owing **\$1200.00**
 - b) 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 Owing - \$1200.00

Relevant Submissions

Landlord Position

14. Landlord1 stated that both parties had entered into a verbal rental agreement, commencing 01 February 2019. The agreed rent was set at \$600.00 per month and due on the 1st day of each month with a security deposit in the amount of \$400.00 collected on 10 February 2019. Landlord1 issued a termination notice (**Exhibit L # 3**) on 28 May 2019 for the intended date of 08 June 2019 (section 19). Landlord1 testified that as of the termination date (08 June 2019), the tenants remained in the unit. Landlord1 stated that rent was outstanding in the amount of \$1200.00 for the period ending 30 June 2019 and stated as of the hearing date 14 June 2019 rent remains outstanding.

Analysis

15. 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.
16. With respect to the arrears being claimed, I agree with the landlords that rent is owed. The determination of the amount of rent owed can only rest with the records submitted from both parties. 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. Rent cannot be withheld without the direction through an order of the Residential Tenancies Division. Based on the evidence provided I find that rent for the period ending 31 May 2019 is outstanding in the amount of **\$600.00**. Rent for the month of June 2019 can only be awarded up to and including the hearing date (14 June 2019) and is calculated as ($\$600.00 \times 12 \text{ months} = \$7200.00 \div 365 \text{ days} = \$19.73 \text{ per day} \times 14 \text{ days} = \276.22). Rent for June 1 – 14, 2019 then is **\$276.22**.

Table # 1: Rent Records

Date	Comment	Due	Payment	Balance
	Bal. Forward	\$ -	\$ -	\$0.00
1-Feb-19	Rent Due	\$ 600.00		(\$600.00)
10-Feb-19	Rent Payment		\$ 600.00	\$0.00
1-Mar-19	Rent Due	\$ 600.00		(\$600.00)
7-Mar-19	Rent Payment		\$ 600.00	\$0.00
1-Apr-19	Rent Due	\$ 600.00		(\$600.00)
1-Apr-19	Rent Payment (sink repair)		\$ 40.00	(\$560.00)
1-May-19	Rent Due	\$ 600.00		(\$1,160.00)
2-May-19	Late Fee	\$ 5.00		(\$1,165.00)
2-May-19	Rent Payment		\$ 560.00	(\$605.00)
31-May-19	Late Fee (May 3 - 31, 19)	\$ 58.00		(\$663.00)
1-Jun-19	Rent Due	\$ 600.00		(\$1,263.00)
13-Jun-19	Late Fee (June 2-13, 19)**	\$ 12.00		(\$1,275.00)

****Maximum late fees (\$75.00) as provided for under Regulations were reached.**

17. The landlord is further awarded a daily rate of rent in the amount of \$19.73 commencing on 15 June 2019 and continuing until the day the landlord obtains vacant possession of the property.

Decision

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

- a) Rent owing up to 31 May 2019..... \$600.00
- b) Rent owing for June 1 – 14, 2019 276.22
- c) Total arrears..... **\$876.22**

- d) The landlords are awarded a daily rate of rent in the amount of \$19.73 beginning on 15 June 2019 and continuing until the day the landlords obtain vacant possession of the property.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

19. The landlords are seeking payment of late fees as a result of the tenants' failure to pay rent on time.
20. Landlord1 testified that the tenants have been in arrears since 01 April 2019. Landlord1 indicated that they are seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018* but only calculating the fees beginning for May 2019 rent as it came due.

Analysis

21. Established by undisputed fact above, the tenants were in arrears for the period ending 14 June 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.
22. Given that the tenants have been in arrears since 01 April 2019, any calculated amount of late fees will exceed the maximum allowable per late period of \$75.00.
23. The issue of rental arrears has been determined above confirming that the tenants owes rent to the landlords.

Decision

24. The landlords' claim for late fees succeeds in the amount of \$75.00 as per the regulations established under the *Residential Tenancies Act, 2018*.

Issue 3: Hearing Expenses

Landlord Position

25. 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 landlords are seeking this expense.

Analysis

26. I have reviewed the testimony and evidence of the landlords 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

27. The tenants shall pay the reasonable expenses of the landlord in the amount of \$20.00.

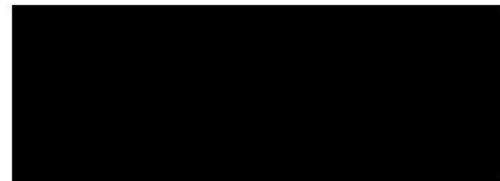
Summary of Decision

28. The landlords are entitled to the following:

a)	Rent Owing (up to and including 14 June 2019).....	\$876.22
b)	Late Fees.....	75.00
b)	Hearing Expenses	<u>\$20.00</u>
c)	Total owing to Landlords	\$971.22

20 June 2019

Date



Michael Greene
Residential Tenancies Tribunal