

## Residential Tenancies Tribunal

Decision 19-0060-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:45 pm on 07 February 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via tele-conference to Residential Tenancies Office, Mt. Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the Landlord 1 participated in the hearing.
3. The applicant, [REDACTED], hereafter referred to as the Landlord 2 participated in the hearing.
4. The respondent, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing.
5. 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 beginning on October 1, 2017 and terminated on January 29, 2019. It was stated that a security deposit in the amount of \$300.00 was collected on or about October 1, 2017 and the landlord issued a termination notice dated January 18, 2019 for the intended termination date of January 29, 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
6. 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

7. The landlords amended the claim at the onset of the hearing to remove the request for vacant possession as they indicated the tenant vacated the property on or about January 29, 2019.
8. 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 landlords show that the tenant was served with the notice of hearing on the **24 January 2019** by serving the Claim and Notice of Hearing to the tenant by electronic means to the phone number [REDACTED] and to the email address [REDACTED]. The tenant has had **14 days** to provide a response.

A phone call was placed to the number for the tenant [REDACTED] with no answer.

9. Based on the sworn testimony of landlord 1 at the hearing, the number/email address used to serve the tenant, was the number/email address provided by the tenant during the normal course of the tenancy. Landlord 1 served the termination notice to the tenant by text message [REDACTED] and email [REDACTED] and the tenant vacated on this notice. Similarly, landlord 1 served the Application for Dispute Resolution to the tenant and accepting the testimony of the landlord, I find that the tenant was properly served 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 in the tenant's absence.

## Issues before the Tribunal

10. The landlords are seeking the following:
  - a) Snow Removal **\$500.00**;
  - b) Cleaning **\$300.00**;
  - c) Rent Owing **\$1850.00**;
  - d) Hearing Expenses;
  - e) Application of Security Deposit

## Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. 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*, Policy 9-2 *Claims and Counter Claims*, 9-3 *Claims for Damage to Rental premises*.

## Issue 1: Rent Owing - \$1850.00

### Relevant Submissions

#### Landlord Position

13. Landlord 1 stated that they entered into a written monthly rental agreement with the tenant, commencing October 1, 2017 with the agreed rent being 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. Landlord 1 issued a termination notice (Exhibit L # 6) for the intended termination date of January 29, 2019 and stated that not all rent was received from the tenant leaving the balance outstanding in the amount of \$1850.00 up to and including 31 January 2019. Landlord 1 stated that as of the hearing date 07 February 2019 rent remains outstanding.

### Analysis

14. 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 landlords actually owed by the tenant.
15. With respect to the arrears being claimed, I agree with the landlord based on the rent records presented 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 (Exhibit L # 1) and have been transposed into Table # 1 below.

16.

Table # 1: Rental Records

Date	Comment	Due	Payment	Balance
	Bal. Forward from April 12, 18	\$ -	\$ -	(\$550.00)
24-Apr-18	Rent Payment		\$ 250.00	(\$300.00)
1-May-18	Rent Due	\$ 600.00		(\$900.00)
10-May-18	Rent Payment		\$ 175.00	(\$725.00)
23-May-18	Rent Payment		\$ 500.00	(\$225.00)
1-Jun-18	Rent Due	\$ 600.00		(\$825.00)
6-Jun-18	Rent Payment		\$ 225.00	(\$600.00)
19-Jun-18	Rent Payment		\$ 225.00	(\$375.00)
1-Jul-18	Rent Due	\$ 600.00		(\$975.00)
28-Jul-18	Rent Payment		\$ 100.00	(\$875.00)
1-Aug-18	Rent Due	\$ 600.00		(\$1,475.00)
8-Aug-18	Rent Payment		\$ 125.00	(\$1,350.00)
1-Sep-18	Rent Due	\$ 600.00		(\$1,950.00)
5-Sep-18	Rent Payment		\$ 350.00	(\$1,600.00)
26-Sep-18	Rent Payment		\$ 400.00	(\$1,200.00)
1-Oct-18	Rent Due	\$ 600.00		(\$1,800.00)
10-Oct-18	Rent payment		\$ 400.00	(\$1,400.00)
24-Oct-18	Rent Payment		\$ 400.00	(\$1,000.00)
1-Nov-18	Rent Due	\$ 600.00		(\$1,600.00)
21-Nov-18	Rent payment		\$ 300.00	(\$1,300.00)
1-Dec-18	Rent Due	\$ 600.00		(\$1,900.00)
5-Dec-18	Rent Payment		\$ 200.00	(\$1,700.00)
19-Dec-18	Rent Payment		\$ 250.00	(\$1,450.00)
1-Jan-19	Rent Due	\$ 600.00		(\$2,050.00)
1-Jan-19	Rent payment		\$ 200.00	(\$1,850.00)

17. It is clear from the above that rent in the amount of \$1450.00 is owing up to and including December 31, 2018. As the landlords terminated the tenancy by way of notice, rent for the month of January 2019 can only be awarded up to and including the termination date or the date the tenant vacated the property. In this case, rent for the period of January 1 – 29, 2019 is calculated as  $(\$600.00 \times 12 \text{ months} = \$7200.00 \div 365 \text{ days} = \$19.73 \text{ per day} \times 29 \text{ days} = \$572.17)$ . Rent for January 1 – 29, 2019 then is **\$572.17**.

## Decision

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

- a) Rent owing up to December 31, 2018..... \$1450.00
- b) Rent owing for January 1 – 29, 2019 ..... 572.17
- c) Sub-total..... \$2022.17
- d) LESS: Tenant Payment (January 1, 2019)..... (\$200.00)
- e) Total Arrears ..... \$1822.17

## Issue 2: Cleaning Costs - \$300.00

### Relevant Submissions

#### Landlord Position

- 19. Landlord 1 testified that the tenant had cats in the rental premises without permission and the cats caused a significant amount of damage. Landlord 1 supported the requirement of a good cleaning by presenting photos of the property (Exhibit L # 2) along with an estimate from a commercial cleaner (Exhibit L # 3), [REDACTED] for 3 hours at \$30.00/hour.
- 20. Landlord 1 testified that the tenant left the property in deplorable condition, both inside and outside. Landlord 1 stated that they did not want to bring hardship to the tenant and estimated that 3 hours at the self-labor rate of \$19.15/hour would enable the property to be cleaned up to a reasonable standard.
- 21. Landlord 1 further testified that the tenant's cats caused significant damage to the property and there was a significant amount of garbage and discarded items left in and around the property.

### Analysis

- 22. I have reviewed the testimony and evidence of the landlords in this matter. The photographic evidence is clear and shows that the property required an extensive cleaning when the tenant vacated the unit. One would reasonably expect the outgoing tenant to leave the unit in a similar condition less reasonable wear and tear when they vacate the property. The landlords claim for 3 hours at the assessed self-labor rate of \$19.15/hour is more than reasonable given the condition of the unit. The original claim was for \$300.00 without any supporting invoicing for this amount. The only estimate was from a cleaning company whose estimate was for \$90.00 (3 hrs X \$30.00/hour). As the landlords were completing the work themselves, I have no choice but to use the self-labor rate. I find the tenant responsible for cleaning the property in the amount of \$57.45.

## Decision

23. The landlords' claim for cleaning costs succeeds in the amount of \$57.45.

### Issue 3: Snow Removal - \$500.00

#### Relevant Submissions

##### Landlord Position

24. The landlords are claiming for an amount to have the snow removed from the tenant's driveway, which the tenant failed to do as required during the tenancy.
25. Landlord 1 testified that it is the tenant's responsibility to keep the driveway and walkway free and clear of ice and snow during the winter. Landlord1 stated that the tenant failed to do this during the tenancy and the resultant snow and ice accumulation now requires that a back hoe be used to clear the ice and snow. Landlord 1 submitted an estimate from [REDACTED] and [REDACTED] (Exhibit L # 4) in the amount of \$491.63 HST included for 4.5 hours at a rate of \$95.00 per hour.
26. Landlord 1 referred to the photos previously submitted (Exhibit L # 2) to demonstrate that the snow was built up in the driveway. However, landlord 1 stated that the weather has taken away some of the snow and he feels that it won't take as much time to clear it given this fact. Landlord 1 estimated that it will take 2 hours to complete.

#### Analysis

27. I have reviewed the testimony and evidence of the landlords in this matter. With respect to any claim it is the burden of the applicant to show that on the balance of probabilities, the respondent is responsible. In this matter, the landlords have claimed the damages were caused by the tenant and has set out to support this claim.
28. It is clear that the driveway was certainly not cleared for a period of time, but the snow is obviously beginning to melt given the weather. The amount of hours being quote by the estimate seems excessive given the photos presented by the landlord. In fact, I find that a 2 hour estimate to remove the snow using a back hoe seems excessive. I find that without an actual invoice, it is extremely difficult to guess what it will take to clear the snow. There is no doubt that the clearing is required and as such, I will make an arbitrary award in the amount of \$100.00 to clear the driveway allowing for the equipment to have to clear ice. The landlords' claim for snow removal succeeds in the amount of **\$100.00**.



## Decision

29. The landlords' claim for snow removal succeeds in the amount of \$100.00.

## Issue 5: Hearing Expenses

### Relevant Submissions

#### Landlord Position

30. The landlords paid a fee in the amount of \$20.00 as a fee for the application processing (**Exhibit L # 5**). The landlords are seeking this cost.

### Analysis

31. I have reviewed the testimony and evidence of the landlords in this matter. The landlords' claim has been successful in part. 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 tenant is responsible to cover these reasonable expenses.

## Decision

32. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

## Issue 6: Application of Security Deposit

#### Landlord Position

33. Landlord 1 testified that a security deposit in the amount of \$300.00 was paid on the property on or about October 2017. The claim is seeking to apply the security deposit against the order issued by the tribunal.

### Analysis

34. Established by undisputed fact in paragraph 31 above, the tenant did pay a security deposit to the landlords in the amount of \$300.00. The landlords' claim has been successful. The security deposit plus accrued interest is \$300.00 as the interest rate for 2017 – 2019 is set at 0%.

**Decision**

35. As the landlords' claim above has been successful, the landlords shall apply the security deposit being held against the attached Order as outlined in the attached.

**Summary of Decision**

36. The landlords are entitled to the following:

a)	Rent Owning .....	\$1822.17
b)	Cleaning Costs .....	57.45
c)	Snow Removal.....	100.00
d)	Hearing Expenses .....	<u>\$20.00</u>
e)	<b>Sub-total</b> .....	<b><u>\$1999.62</u></b>
f)	<b>LESS: Security Deposit being held</b> .....	<b><u>(\$300.00)</u></b>
g)	<b>Total owing to Landlords</b> .....	<b><u>\$1699.62</u></b>

April 3, 2019

**Date**



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