

## Residential Tenancies Tribunal

Decision 19-0104-01

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 10:30 am on **11 February 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing and represented by [REDACTED]. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as tenant1 did not participate in the hearing.
4. The respondent, [REDACTED], hereafter referred to as tenant2 did not participate in the hearing.
5. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$400.00 + council fees per month and due on the 1<sup>st</sup> of each month. There was no security deposit collected on the tenancy. There was no termination notice issued on the tenancy.
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 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 landlord shows that tenant1 was served with the notice of this hearing on the **22 December 2019** by serving the application for dispute resolution document personally to tenant1 at [REDACTED]. The tenant has had **51 days** to provide a response.

The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **23 December 2019** by serving the application for dispute resolution document personally to tenant2 at [REDACTED]. The tenant has had **50 days** to provide a response.

Contact was attempted to the phone number on file [REDACTED]. The person who answered the phone advised that the respondents don't live at the address and was not there.

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 applicant, I proceeded with the hearing.

8. The landlord indicated on an invoice to the tenants, that a payment of **\$700.00** has been received from tenant1.

## Issues before the Tribunal

9. The landlord is seeking the following:
  - a) Payment of rent owing **\$1200.00 + \$348.00 (Council Fees)**
  - b) Late Fees **\$75.00**
  - c) Lawn Cutting **\$100.00**
  - d) Hearing expenses

## Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. 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 + \$348.00

### Relevant Submissions

#### Landlord Position

12. The landlord stated that both parties had entered into a verbal rental agreement, commencing 01 December 2019. The agreed rent was set at \$400.00 + council fees per month and due on the 1<sup>st</sup> day of each month with no security deposit collected. There was no termination notice issued on the tenancy.
13. The landlord testified that rent was outstanding in the amount of **\$1200.00** for the period ending 31 July 2019 (**Exhibit L # 1**). The landlord further testified that the tenants failed to pay the required service fees to the town council (Garbage, Water & Sewer) (**Exhibit L # 2**) in the amount of **\$348.00**. The landlord stated as of the hearing date 11 February 2020 rent and service fees 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/fees that is being claimed by the landlord actually owed by the tenants.
15. With respect to the arrears (including the council fees) being claimed, I agree with the landlord that rent/fees are owed. The determination of the amount of rent owed can only rest with the records submitted into evidence. 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. The rental agreement (**Exhibit L # 4**) was not signed, but it is clear of the intent behind the agreement. Based on the evidence provided I find that rent/fees for the period ending 31 July 2019 is outstanding in the amount of **\$1548.00**.

## Decision

16. The landlord,s total claim for rent succeeds as follows:
- a) Rent owing up to 31 July 2019..... \$1200.00
  - b) Water/Sewer Fees owing up to 31 July 2019..... 288.00
  - c) Garbage Fees Owing up to 31 July 2019..... 60.00
  - d) Total arrears..... **\$1548.00**

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

### Landlord Position

17. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
18. The landlord testified that the tenants have been in arrears since 01 December 2018. The landlord 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

19. Established by undisputed fact above, the tenants were in arrears for the period ending 31 July 2019. 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.
20. Given that the tenants have been in arrears since 01 December 2018, any calculated amount of late fees will exceed the maximum allowable per late period of \$75.00.
21. The issue of rental arrears has been determined above confirming that the tenants owes rent/fees to the landlord.

## Decision

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

**Issue 3: Lawn cutting Expenses - \$100.00**

Landlord Position

- 23. The landlord is seeking costs associated with the cutting of the lawn on the property once the tenants vacated.
- 24. The landlord testified that the lawn was at least 18 inches high. The landlord testified that they are claiming \$100.00 paid to [REDACTED] for the grass cutting. There was no receipt for the payment presented. The landlord referred to the invoice to the tenants for the costing (**Exhibit L # 2**). There was no pictures of the lawn condition presented to support the claim.

**Analysis**

- 25. The applicant is responsible to support and substantiate their claim beyond the balance of probabilities. In this portion of the claim the landlord has failed to demonstrate that the damage (lawn condition) actually existed. As such, this portion of the claim fails.

**Decision**

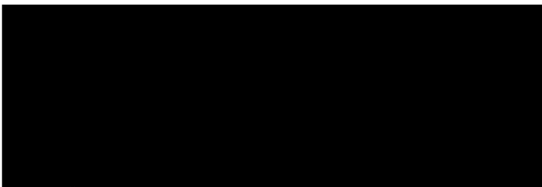
- 26. The landlord's claim for lawn cutting fails.

**Summary of Decision**

- 27. The landlord is entitled to the following:
  - a) Rent Owing (up to and including 31 July 2019) .....\$1200.00
  - b) Council Fees .....348.00
  - c) Late Fees .....75.00
  - e) Subtotal.....\$1623.00
  
  - f) **LESS: Payments made by tenants ..... (\$700.00)**
  
  - g) **Total owing to Landlord .....\$923.00**

03 April 2020

**Date**



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