

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0361-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 9:15 am on 30 May 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, NL.
2. The applicant, [REDACTED] hereafter referred to as the landlord, participated in the hearing. (*affirmed*)
3. The respondent, [REDACTED] hereafter referred to as the tenant did not participate in the hearing.
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$1000.00 per month and due on the 1<sup>st</sup> of each month. It was stated that a security deposit in the amount of \$500.00 was collected on the tenancy on or about 06 November 2014. The landlord issued a termination notice dated 10 May 2019 for the intended termination date of 21 May 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
5. 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

6. 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 landlord shows that the tenant was served with the notice of this hearing on the **17 May 2019** by serving the Application for Dispute Resolution document electronically to the phone number [REDACTED]. This service is supported with copies of the texted service along with communications between the parties concerning the contents of the application served and verification that the number belongs to the tenant.

The tenant has had **12 days** to provide a response.

The tenant was contacted prior to the hearing at [REDACTED] and there was no answer and no capacity to leave a message.

As the tenant was 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.

7. The landlord amended the claim at the outset to remove the request for vacant possession as the tenant vacated on or about 21 May 2019.

## Issues before the Tribunal

8. The landlord is seeking the following:
  - a) Payment of rent owing **\$1150.00**
  - b) Hearing expenses
  - c) Application for security deposit

## Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47(1)
10. Also relevant and considered in this case are Sections 19, 34 and 35 of the *Residential Tenancies Act, 2018*; and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

## Issue 1: Rent Owing - \$1150.00

### Relevant Submissions

#### Landlord Position

11. The landlord stated that both parties had entered into a written rental agreement, commencing November 2014. The agreed rent is set at \$1000.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$500.00 collected on the tenancy on or about 06 November 2014. The landlord issued a termination notice (**Exhibit L # 3**) on 10 May 2019 for the intended date of 21 May 2019 (section 19). The landlord testified that as of the date (21 May 2019), the tenant vacated the unit. The landlord stated that rent was outstanding in the amount of \$1150.00 for the period ending 31 May 2019 (**Exhibit L # 2**), and stated as of the hearing date 30 May 2019, rent remains outstanding. The landlord rental records were transferred to Table #1 below for clarity of this decision.

12. **Table # 1: Rental Records**

Date	Comment	Due	Payment	Balance
	Bal. Forward from 31 Oct 2108	\$ -	\$ -	\$0.00
1-Nov-18	Rent Due	\$ 1,000.00		(\$1,000.00)
1-Nov-18	Rent Payment		\$ 700.00	(\$300.00)
13-Nov-18	Rent Payment		\$ 150.00	(\$150.00)
26-Nov-18	Rent Payment		\$ 150.00	\$0.00
1-Dec-18	Rent Due	\$ 1,000.00		(\$1,000.00)
3-Dec-18	Rent Payment		\$ 550.00	(\$450.00)
13-Dec-18	Rent Payment		\$ 200.00	(\$250.00)
21-Dec-18	Rent Payment		\$ 150.00	(\$100.00)
27-Dec-18	Rent Payment		\$ 100.00	\$0.00
1-Jan-19	Rent Due	\$ 1,000.00		(\$1,000.00)
2-Jan-19	Rent Payment		\$ 150.00	(\$850.00)
7-Jan-19	Rent Payment		\$ 170.00	(\$680.00)
29-Jan-19	Rent Payment		\$ 340.00	(\$340.00)
1-Feb-19	Rent Due	\$ 1,000.00		(\$1,340.00)
4-Feb-19	Rent Payment		\$ 330.00	(\$1,010.00)
28-Feb-19	Rent Payment		\$ 250.00	(\$760.00)
1-Mar-19	Rent Due	\$ 1,000.00		(\$1,760.00)
1-Mar-19	Rent Payment		\$ 500.00	(\$1,260.00)
11-Mar-19	Rent Payment		\$ 100.00	(\$1,160.00)
15-Mar-19	Rent Payment		\$ 150.00	(\$1,010.00)
20-Mar-19	Rent Payment		\$ 400.00	(\$610.00)
1-Apr-19	Rent Due	\$ 1,000.00		(\$1,610.00)
1-Apr-19	Rent Payment		\$ 300.00	(\$1,310.00)
2-Apr-19	Rent Payment		\$ 200.00	(\$1,110.00)
8-Apr-19	Rent Payment		\$ 100.00	(\$1,010.00)
30-Apr-19	Rent Payment		\$ 200.00	(\$810.00)
1-May-19	Rent Due	\$ 1,000.00		(\$1,810.00)
1-May-19	Rent Payment		\$ 150.00	(\$1,660.00)
6-May-19	Rent Payment		\$ 150.00	(\$1,510.00)
7-May-19	Rent Payment		\$ 150.00	(\$1,360.00)

**Analysis**

13. 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 landlord actually owed by the tenant.
14. With respect to the arrears being claimed, I agree with the landlord that rent is owed. The determination of the amount of rent owed can only rest with the

records submitted or acknowledgement of the respondent in the matter at hand. 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. Rent cannot be withheld without the direction through an order of the Residential Tenancies Division. Based on the evidence and testimony presented, I find that rent for the period ending 30 April 2019 is outstanding in the amount of **\$810.00**. As the landlord has terminated the tenancy, the landlord would not be entitled to any rent beyond the date of termination or the date the tenant vacated the property. In this case it appears that the vacating date is 21 May 2019. As such the tenant is responsible for rent for the period of May 1 – 21, 2019 in the amount of **\$690.48** calculated as  $(\$1000.00 \times 12 \text{ months} = \$12000.00 \div 365 \text{ days} = \$32.88 \text{ per day} \times 21 \text{ Days} = \$690.48)$

## Decision

15. The landlord's total claim for rent succeeds as follows:

a) Rent owing (up to 30 April 2019).....	\$810.00
b) Rent owing for May 1 – 21, 2019 .....	<u>690.48</u>
<b>c) Sub-total.....</b>	<b>\$1500.48</b>
<b>d) LESS: Tenant Payment May 2019 .....</b>	<b><u>(\$450.00)</u></b>
<b>e) Total Owing to Landlord .....</b>	<b><u>\$1050.48</u></b>

## Issue 2: Hearing Expenses

### Landlord Position

16. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████) (**Exhibit L # 4**). The landlord is seeking this expense.

### Analysis

17. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord is 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

18. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

