

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0464-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:45 am on 15 February 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED] hereafter referred to as landlord, participated in the hearing and was represented by [REDACTED] – Property Manager. (*Affirmed*).
3. The respondent, [REDACTED] hereafter referred to as the tenant, participated in the hearing and was represented by Mr. David Sheppard. (*Affirmed*).
4. In a proceeding under the *Residential Tenancies Act*, 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

5. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **22 October 2020 and again 16 December 2020** by serving the original documents to the tenant by electronic means to the email: [REDACTED] along with a copy of the email sent.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a) Payment of rent owing **\$1600.00**;
 - b) Payment of late fees
 - c) Hearing expenses.
 - d) Application of the Security Deposit

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
8. 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 - \$1600.00

Relevant Submissions

Landlord Position

9. The landlord stated that he had entered into a fixed term rental agreement with the tenant which was scheduled to expire on 30 June 2020. The agreed rent is set at \$800.00 per month and due on the 1st day of each month with a security deposit in the amount of \$600.00 collected on this tenancy on or about 22 May 2019. The landlord is seeking payment for the month of July and August 2020 as rent in lieu of proper notice.
10. The landlord submitted into evidence a copy of the rental records (**Exhibit L # 1**) showing a balance on account of \$1600.00 up to and including 31 August 2020. The landlord further testified that the tenant failed to provide a termination notice as required to terminate the tenancy.
11. The landlord testified that they immediately attempted to re-rent the property to mitigate any loss. They started to post ads on 02 July 2020 on the company web site, and the company computer system which feeds directly into Kijiji. The landlord submitted a copy of the advertisements for the apartment (**Exhibit L # 3**).

Tenant Position

12. The tenant disputes the claim of the landlord stating that there was no requirement to terminate the tenancy as the lease agreement had expired. The tenant referenced a previously issued decision of the tribunal (20-0023-01) (**Exhibit T #1**) and specifically referred to the following section of the decision:

“The tenants are responsible for the contractual obligations for which they enter into, to the conclusion of the contract.”

13. The tenant further argued that section 8 of the Residential Tenancies Act, 2018 only applies if the tenant continues to use the property after the expiration of the agreement. Section 8 reads:

8. (1) A landlord may enter into a rental agreement where a residential premises is rented

(a) from week to week;

(b) from month to month; or

(c) for a fixed term of not less than 6 months.

(2) Where a residential premises is rented for a period that is

(a) less than one week, the residential premises shall be considered to be rented from week to week;

(b) more than one week and less than 6 months, the residential premises shall be considered to be rented from month to month; and

(c) more than 12 months, the residential premises shall be considered to be rented for a fixed term of 12 months.

(3) Where a tenant continues to use or occupy a residential premises after a fixed term has expired, and notice of termination of the rental agreement

(a) has not been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement, but the tenancy may be terminated by giving notice in accordance with paragraph 18(1)(b) or 18(2)(b); or

(b) has been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement until the expiration of the notice period.

14. The tenant argues that the rental agreement was concluded and therefore there is no standing for the claim before the tribunal.

15. The tenant further argues that rent is only payable up to and including the date the tenant vacates the property. The tenant referred to a previous decision of the

tribunal (19-0015-04) and refers to paragraph 13:

..... *Rent for January 2019 can only be awarded up to and including the date the tenant vacated.....*

16. The tenant further argues that the landlord issued a rental increase notice which did not follow the guidelines as set out in section 16 of the *Residential Tenancies Act, 2018*. The tenant therefore suggests that any rental increase would not be valid.

Landlord Cross Examination Position

17. The landlord states that section 18 of the *Residential Tenancies Act, 2018* requires a termination notice to be issued to terminate a tenancy. He further added that a notice to increase rent was issued as per section 16 of the *RTA, 2018*.

Analysis

18. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there are 2 issues here that need to be addressed: (i) when is a lease agreement concluded, and (2) is the rent that is being claimed by the landlord actually owed by the tenant.
19. Let me first discuss the tenant's arguments with respect to the lease being concluded. A rental agreement, whether that is a verbal or a written, or whether it be monthly or fixed term, is not concluded or terminated unless either party issues a valid termination notice as allowed for in the *Residential Tenancies Act, 2018*. Section 18 speaks for the "no cause" notice requirements and in particular to this case, provides the following for a landlord and a tenant:

18. (1) *A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises*

(c) *not less than 2 months before the end of the term where the residential premises is rented for a fixed term.*

(2) *A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises*

(c) *not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

20. The word "SHALL" in this section means that this must happen. It is definitive and requires that this action must take place. The evidence is such in this claim that no notice was provided by the landlord to terminate the tenancy, nor was there a notice provided by the tenant to terminate the tenancy. From that, the

property would be considered to be in the possession of the tenant unless otherwise (**terminated**) recovered through abandonment by the landlord. There was no indication that such a recovery was engaged.

21. The tenant's reference to decision 20-0023-01 should be taken and read in the full context of the decision. One cannot simply pick one or two sentences from a decision which seemingly fit the defense of the party. This decision does speak to the contractual responsibilities of the tenant to the conclusion of the agreement and the tenant in that case was ordered to pay for their determined obligations. The landlords recovered the property through abandonment (thereby concluding the tenancy at the end of the agreement and the tenant was held to the contractual responsibilities).
22. The tenant argues that the rental agreement was concluded and that the tenant would be responsible for rent up to the time he vacated. Referring to a tribunal decision (19-0015-04), the tenant referred to paragraph 13 and the awarding of rent up to the date the tenant vacated. Again, reading the entire context of the decision is very important. This was a monthly tenancy and the landlord did terminate the tenancy by the issuance of a valid termination notice. In law, if a landlord terminates a tenancy for cause, as was the case in 19-0015-04, the tenant can move on that notice and owe only up to the date of vacating. The two cases do not parallel each other in details and as such the outcome results are very different.
23. I can conclude here that the tenant nor the landlord did not terminate the tenancy in this matter. Section 18 is clear on the requirement of a termination notice. In this matter the tenant decided to vacate the property and as such would be required to provide a termination notice under section 18(1)(c) of the *Residential Tenancies Act, 2018*.
24. I reference section 8(3)(a) of the *RTA, 2018* which continues the agreement beyond the first year should an agreement not be terminated.

8(3) Where a tenant continues to use or occupy a residential premises after a fixed term has expired, and notice of termination of the rental agreement

(a) has not been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement, but the tenancy may be terminated by giving notice in accordance with paragraph 18(1)(b) or 18(2)(b); or

(b) has been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement until the expiration of the notice period.

25. I find the tenant is responsible for the contractual obligations entered into on the signing of the rental agreement with the landlord. However, those obligations are not simply as the landlord states they are. The rental agreement as per the analysis above converted to a month to month tenancy effective 01 July 2020 and at that point the tenant would be required to provide only a 1 month notice as per section 18(1)(b) where the property is rented month to month. Further, the landlord began to attempt to re-rent the property effective 02 July 2020 as

required by law regarding mitigation. As such, I find that the tenant is responsible for rent in lieu of notice for the period of 01 July 2020 to 31 July 2020 in the amount of \$800.00.

Decision

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

- a) Rent owing up to 31 July 2020 \$800.00
- b) Total due to Landlord..... \$800.00**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

27. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.

28. The landlord testified that the tenant has been in arrears for July 2020. The landlord indicated that they are seeking late fees be applied as per the *Residential Tenancies Regulations, 2018*.

Analysis

29. Established above, the tenant was in arrears July 2020. 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.

30. The issue of rent in lieu of notice has been determined above confirming that the tenant owes rent to the landlord. The calculated late fees then are as follows:

a. 02 July 2020 (1 st Day Late @ \$5.00):	\$5.00
b. July 3 – 31, 2020 (29 Days @ \$2.00/day):	<u>58.00</u>
c. Total Late Fees Owing:	<u>\$63.00</u>

Decision

31. The landlord's claim for late fees succeeds in the amount of the maximum allowable of \$63.00.

Issue 3: Hearing Expenses

Landlord Position

32. 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 # 5**). The landlord is seeking this cost.

Analysis

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

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

Issue 4: Application/Refund of Security Deposit

Landlord Position

35. The landlord testified that a security deposit in the amount of \$600.00 was paid on the property on or about 22 May 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
36. The landlord acknowledges holding the security deposit in the amount of \$600.00.

Tenant Position

37. The tenant seeks the security deposit refunded if there is no merit to the claim.

Analysis

38. Established above, the tenant did pay a security deposit to the landlord in the amount of \$600.00.
39. The landlord's claim has been successful in part as indicated above. The security deposit plus accrued interest is \$600.00 as the interest rate for 2019 – 2021 is set at 0%.

40. As the landlord's claim is successful in part as indicated above, the claim against the security deposit being held by the landlord also succeeds. The security deposit is an asset of the tenant to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was an attributable loss and as such, the landlord shall offset the security deposit against the amount outstanding as determined in this decision and the attached order.

Decision

41. As the landlord's claim above has been successful, the landlord shall offset the security deposit as indicated in the attached order.

Summary of Decision

42. The landlord is entitled to the following:

a)	Rent in Lieu of Notice.....	\$800.00
b)	Late Fees.....	63.00
c)	Hearing Expenses	<u>\$20.00</u>
d)	Sub-total	\$883.00
e)	LESS: Security Deposit.....	<u>(\$600.00)</u>
f)	Total owing to the Landlord	\$283.00

25 February 2021

Date

Michael Greene
Residential Tenancies Tribunal