

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0501-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **10:45 am on 12 January 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]. *(Affirmed)*.
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. *(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 application was AMENDED at the hearing to increase the rent being claimed to \$6236.00 for the period ending 31 January 2021 as a result of rent that has come due as part of the fixed term lease agreement.
6. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **07 December 2020** by serving the original documents to the tenant to the email [REDACTED] and attaching a copy of the email along with a response from the tenant.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Payment of rent owing **\$6236.00**;
 - b) Payment of late fees/NSF fees
 - c) Apply Security Deposit

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. 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 - \$6236.00

Relevant Submissions

Landlord Position

10. The landlord stated that they had entered into a written fixed term rental agreement with the tenant slated to expire on 31 August 2021. The agreed rent is set at \$1320.00 per month plus \$200.00 per month for furniture in the unit and due on the 1st day of each month. A security deposit in the amount of \$990.00 was collected on this tenancy on or about 20 August 2020. The landlord submitted a rent ledger (**Exhibit L # 2**) showing rent outstanding is \$6236.00 up to and including 31 January 2021. The landlord further submitted a copy of the rental agreement (**Exhibit L # 1**) to establish the tenancy.
11. The landlord testified that the tenant wanted a quick move in and required a furnished apartment. He stated that the first two weeks were not charged to the tenant and that the first rent payment for September bounced and was subsequently paid.
12. He further added that the October payment also bounced and there was some discussion on subletting. He added that the unit was never formally returned to the landlord. The landlord stated that on or about 20 October 2020 the tenant was notified that he was in default of the lease agreement. It is the landlord's opinion that the tenant has never abandoned the lease and that they will show the unit for the tenant as required. The landlord added that the unit is checked for protection and indicated that food remains in the unit.

Tenant Position

13. The tenant stated that he disagrees with the landlord's claim. He testified that the unit was cleaned and none of his personal belongings remain in the unit. He stated that he made is quite clear that he had vacated the unit when he sent an email to the landlord on or about October 2020 (**Exhibit L # 3**).
14. The tenant further stated that he has not paid the rent.

Analysis

15. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there are 2 issue here that needs to be addressed:
 - a. (i) is the rent that is being claimed by the landlord actually owed by the tenant and;
 - b. (ii) has the tenant abandoned the property and rental agreement?
16. I will address item (ii) first. The idea of abandonment is clear in the *Residential Tenancies Act, 2018* under section 31 and reads as follows:

Abandonment of residential premises by tenant

31. (1) Where a tenant has abandoned the residential premises, the landlord may enter and take possession of the residential premises.

(2) A tenant is considered to have abandoned a residential premises where

(a) the tenant has vacated the residential premises;

(b) the rental agreement is not terminated in accordance with this Act or the rental agreement; and

(c) rent is overdue.

17. Evidence is clear from both parties that rent is overdue for the month of October 2020. Evidence is also clear that no formal termination notice has been issued by either party on this tenancy. Lastly, the tenant has indicated that he vacated the property on or about 27 October 2020. The landlord disagrees with the last point and thereby making it the point of contention.
18. The tenant referred to an email that he had sent to the landlord in October 2020 which he clearly indicates he had left the unit. In reviewing this email which was a part of the landlord submission and dated 13 October 2020, I find that the content is not ambiguous and is clear that the tenant had vacated the property and would not be continuing on with the lease because of finances and work commitments with the [REDACTED]

19. The landlord as of the hearing date has not attempted to re-rent the property as required by law as it relates to reasonable mitigation. As the landlord has not attempted to reasonably mitigate any loss, the tenant would only be required to pay for the final month of the tenancy, in this case would have been October 2020. The landlord cannot sit back and rest on the notion of a signed rental agreement for the rent to be covered by a tenant without reasonably attempting to recover their losses as required. As such, I find that the tenant is responsible for rent for the period of October 1 – 31, 2020 in the amount of \$1520.00.

Decision

20. The landlord's total claim for rent succeeds in the amount of **\$1520.00** for the period ending 31 October 2020.

Issue 2: Payment of Late Fees/NSF - \$100.00

Landlord Position

21. The landlord is seeking payment of late fees (\$75.00) in addition to two NSF fees (\$25.00) as a result of the tenant's failure to pay rent on time and the bouncing of payments for October 2020.
22. The Landlord is seeking a NSF Fee of \$25.00.
23. The landlord testified that the tenant has been in arrears for October 2020. The calculated late fees would be:
 - a. First Day Late (Oct 2, 2020): \$5.00
 - b. Late fees Oct 3 – 31, 2020): \$58.00
 - c. Total Late Fees: \$63.00

Analysis

24. Established by undisputed fact above, the tenant was in arrears for October 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.
25. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord. Further, it has been determined that October rent was returned NSF and a fee of \$25.00 is permitted by regulation. As such, I find the tenant responsible for the calculated late fees and the NSF fee.

Decision

26. The landlord's claim for late fees and NSF fees succeeds in the amount of \$88.00.

Issue 3: Application of Security Deposit

Landlord Position

27. The landlord testified that a security deposit in the amount of \$990.00 was paid on the property on or about 20 August 2020. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

Tenant Position

28. The tenant is fine to apply the security deposit against any amount outstanding.

Analysis

29. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$990.00. The landlord's claim has been successful in part. The security deposit plus accrued interest is \$990.00 as the interest rate for 2020 is set at 0%.

Decision

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

Summary of Decision

31. The landlord is entitled to the following:

a)	Rent Owing	\$1520.00
b)	Late Fees/NSF	88.00
c)	Sub-total owing to the landlord	\$1608.00
d)	LESS: Security Deposit	<u>(\$990.00)</u>
e)	Total Owing to Landlord.....	<u>\$618.00</u>

18 January 2021

Date

Michael Greene
Residential Tenancies Tribunal