

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0104-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **1:45 pm** on **04 May 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 landlord1, participated in the hearing. (*Affirmed*).
3. The applicant, [REDACTED] hereafter referred to as landlord2, participated in the hearing. (*Affirmed*).
4. The respondent, [REDACTED] hereafter referred to as tenant1, participated in the hearing. (*Affirmed*).
5. The respondent, [REDACTED] hereafter referred to as tenant2, did not participate in the hearing. (*Absent and not represented*).
6. The details of the claim were presented as a written monthly agreement set to with rent set at \$800.00 per month with utilities extra and rent was due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$600.00 was collected on or about 14 December 2019 and remains with the landlords. The landlords issued a termination notice on 18 January 2021 for the termination date of 31 March 2021 under section 18 of the *Residential Tenancies Act, 2018*.
7. 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

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 this hearing on the **31 March 2021** by serving the original documents to tenant2 by email to the address [REDACTED] and supplying the verification of the email.

A phone call was placed to tenant2 at:

[REDACTED] No answer.

9. As tenant2 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 in the tenant's absence.
10. The application was amended to remove the request for Vacant Possession as the tenants vacated the property on or about 31 March 2021.

## Issues before the Tribunal

11. The landlords are seeking the following:
  - a) Payment of rent owing **\$1150.00**;
  - b) Payment of late fees **\$150.00**;
  - c) Compensation for Damages **\$61.38**;
  - d) Other **\$275.00**;
  - e) Hearing expenses;
  - f) Application of the Security Deposit

## Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. 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 - \$1150.00

### Relevant Submissions

#### Landlord Position

14. The landlords stated that they entered into a written monthly rental agreement (**Exhibit L # 1**) with the tenants. The agreed rent is set at \$800.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$600.00 collected on this tenancy on or 14 December 2019. The landlords are seeking payment for rent arrears in the amount of **\$1150.00** for the period ending 31 March 2021 (**Exhibit L # 2**).
15. The landlords issued a termination notice on 18 January 2021 for the termination date of 31 March 2021 under section 18 of *The Act* and the tenants moved on this notice.

#### Tenant Position

16. The tenants chose to make no comments concerning the amount of rent being claimed outstanding.

### Analysis

17. I have reviewed the testimony and evidence of the landlords and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (1) is the rent arrears that is being claimed by the landlords actually owed by the tenants.
18. The landlords' claim is for the period ending 31 March 2021 which was the last month the tenants were living at the unit. The records are clear the rental arrears had accumulated in the amount of \$1150.00 for the period ending 31 March 2021. I also can determine that the landlords terminated the tenancy on the 31 March 2021 and the tenants vacated as directed.

19. Rent is paid for the use and occupation of a property for which the tenants did occupy the unit. Records are clear that \$975.00 is outstanding as of 31 March 2021. I find the tenants are responsible for rent for the period ending 31 March 2021 in the amount of \$975.00.

### **Decision**

20. The landlords' total claim for rent succeeds as follows:
  - a) Rent owing up to 31 March 2021 ..... \$975.00
  - b) Total due to Landlords..... \$975.00**

### **Issue 2: Payment of Late Fees - \$150.00**

#### Landlord Position

21. The landlords are seeking payment of late fees as a result of the tenants' failure to pay rent on time.
22. The landlords testified that the tenants have been in arrears since February 2021. The landlords indicated that they are seeking late fees for each month be applied as per the *Residential Tenancies Regulations, 2018*.

#### **Analysis**

23. Established above, the tenants were in arrears February 2021. 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.
24. The issue of rent arrears has been determined above confirming that the tenants owe rent to the landlords. The calculated late fees would exceed the maximum allowable per late period. As such, the landlords' claim for late fees succeeds in the amount of \$75.00.

### **Decision**

25. The landlords' claim for late fees succeeds in the amount of the maximum allowable of \$75.00.

## Issue 3: Compensation for Damages - \$61.38 / Other - \$275.00

### Relevant Submissions

#### Landlord Position

26. The landlords testified that when the property was recovered it was noticed that the following items were damaged as outlined:
  - a. Replace Broken/Missing Blinds- **\$61.38**
  - b. Cleaning required - **\$100.00**
  - c. Items removed to the landfill - **\$175.00**
27. The landlords testified that there was a couple blinds broken that had to be replaced. There was no receipts submitted for the cost of the replacement blinds. The landlords submitted photos of the damaged blinds (**Exhibit L # 3**) and photos of the cleaning required (**Exhibit L # 5**). The landlords testified that they had friends help with the cleaning and charged the tenants \$100.00 for the services for which no receipts were submitted.
28. The landlords further testified that there were belongings of the tenants left in the property. The landlords stated that the property was rented for 01 April 2021 and therefore the items had to be removed. The landlords advised that no affidavit of abandoned property was filed as of the hearing date as required by the legislation and that the items were removed from the unit and stored in the landlords' garage. The landlords estimated that \$175.00 was a fair price for the services.

#### Tenant Position

29. Regarding the damages to the blinds, tenant1 accepted that the blinds were damaged as a result of the tenancy and indicated that she had purchased blinds and advised the landlords of this. She reported that she still has the blinds.
30. Tenant1 had no comments concerning the cleaning required and stated that the items that were left in the unit was that of [REDACTED] so she had no say in those items.

### Analysis

31. I have reviewed the testimony and evidence of the landlords and tenant in this portion of the claim. The landlord applicants are required to establish three criteria for a successful claim as follows:
  - a. Show that the damage exists
  - b. Show that the respondent is liable
  - c. Show a valuation for the repair or replacement

32. The landlords have demonstrated that the tenants left personal property and bags of apparent garbage on the exterior of the property. There was one picture taken seemingly during the tenancy where there was fecal matter on the floor of a child's bedroom. This photo is not date stamped and the meta data cannot be extracted from the image to ascertain the date taken.
33. It is unclear what items the tenants left inside the property and what condition the property was in after the tenants vacated. The landlords have not shown this tribunal any sort of depiction of this in the evidence presented.
34. This tribunal is not satisfied that any cleaning was required as there was no conclusive and supporting evidence presented. Further, there was no receipts of verification of payment to the persons completing the task.
35. Regarding the removal and storage of personal items. The legislation requires that any abandoned personal items of a tenant requires that where a landlord is storing items or seeking to dispose of items, an affidavit of abandoned property (inventory of items) is to be presented to the director of Residential Tenancies within a reasonable time. This was not completed by the landlords. The landlords made the choice to store the items of the tenants in favor of throwing them to the landfill and has utilized personal storage space in his garage. There is a cost to this. Market rates for a small storage facility is approximately \$150.00 per month and there would have been labor to move the items to the garage. I find the charge of **\$175.00** to be reasonable and award the landlords this amount. I refer the landlords to section 32 of the *Residential Tenancies Act, 2018* regarding the filling of an inventory.
36. Tenant1 has acknowledged the broken blinds and indicated that she had purchased the blinds for replacement, but never got them to the landlords. The landlords needed the blinds in the property for the new tenants which is reasonable and as such replaced them at a claimed cost of \$61.38. There was no indication how old the blinds were and there was no demonstrated costs of the replacement blinds. The landlords have failed to support the claim for the replacement cost of the items, therefore no award can be made and as such, the claim fails.

## **Decision**

37. The landlords' claim for damages succeeds in the amount of **\$175.00**.

## **Issue 4: Hearing Expenses**

### Landlord Position

38. 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 # 4). The landlord is seeking this cost.

## **Analysis**

39. I have reviewed the testimony and evidence of the landlords and tenant in this matter. 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 tenants are responsible to cover these reasonable expenses.

## **Decision**

40. The tenants shall pay the reasonable expenses of the landlords in the amount of \$20.00.

## **Issue 5: Application/Refund of Security Deposit**

### Landlord Position

41. The landlords testified that a security deposit in the amount of \$600.00 was paid on the property on or about 14 December 2019. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.
42. The landlords acknowledges holding the security deposit in the amount of \$600.00.

## **Analysis**

43. Established above, the tenants did pay a security deposit to the landlords in the amount of \$600.00.
44. The landlords' 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%.
45. As the landlords' claim is successful in part as indicated above, the claim against the security deposit being held by the landlords also succeeds. The security deposit is an asset of the tenants to be held against any loss incurred by the landlords attributed to the tenancy. In this matter it has been determined that there was an attributable loss and as such, the landlords shall offset the security deposit against the amount outstanding as determined in this decision and the attached order.

## **Decision**

46. As the landlords' claim above has been successful, the landlords shall offset the security deposit as indicated in the attached order.

## Summary of Decision

47. The landlords are entitled to the following:

a)	Rent Owing .....	\$975.00
b)	Late Fees.....	75.00
c)	Compensation for Damages .....	175.00
c)	Hearing Expenses .....	<u>\$20.00</u>
d)	<b>Sub-total .....</b>	<b>\$1245.00</b>
e)	<b>LESS: Security Deposit.....</b>	<b><u>(\$600.00)</u></b>
f)	<b>Total owing to the Landlords.....</b>	<b><u>\$645.00</u></b>

26 May 2021

**Date**

