

Residential Tenancies Tribunal

[REDACTED] Decision 19-0004-04

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:00 am (Labrador Time) on 24 October 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
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 participated in the hearing (*Affirmed*).
6. The details of the claim were presented as a written fixed term rental agreement which commenced 22 May 2017 and expired 01 May 2019 with rent set at \$1500.00 per month (utilities extra) and due on the 1st of each month. The security deposit collected on the tenancy has been previously ordered returned by way of a decision under file ([REDACTED]). The tenants issued a verbal termination notice on 12 November 18 for the intended termination date of 30 November 2018.
7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicants have 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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

8. The claim was amended at the onset to change the legal name of the landlord1 to read [REDACTED].
9. The landlords requested during the hearing to remove the portion of the claim seeking damages from the tenants.

Issues before the Tribunal

10. The landlords are seeking the following:
 - a) Payment of rent owing **\$3000.00**
 - b) Payment of late fees **\$75.00**
 - c) Payment of Utilities **\$151.78**
 - d) Hearing expenses

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. 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 - \$3000.00

Relevant Submissions

Landlord Position

13. Landlord1 stated that they did not receive a proper notice from the tenants when they vacated the rental property (30 November 2018). Landlord1 testified that a verbal notice was received from the tenants on 12 November 2018 for 30 November 2018. Landlord1 testified that they normally rent the property via posting ads through the yellow pages, listed on Facebook, listed with town services, and listed with the local college. Landlord1 testified that they re-rented the property for 01 June 2019 and are seeking \$3000.00 for the months of December 2018 and January 2019 @ \$1500.00 per month.
14. Landlord1 submitted into evidence a copy of the rental agreement (**Exhibit L # 1**).

Tenant Position

15. The tenants testified that it was their understanding that the rental agreement expired on 31 May 2018 as nothing was re-signed after this date. The tenants testified that they did provide a verbal notice on 12 November 2018 but also indicated that they did send a text to the landlords on this date as well. The tenants testified that they did not pay rent for December 2018 or January 2019.

Analysis

16. I have reviewed the testimony and evidence of the landlords and tenants 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 landlords actually owed by the tenants.
17. With respect to the rent in lieu of notice being claimed, there are a number of factors that need to be considered, the first is the rental agreement. On examination of the agreement, it is apparent that the agreement did expire on 31 May 2018 and was never renewed on a formal written basis. That being the case, this will be looked at as a written month to month tenancy. The requirement of the tenant then is to provide a 1 month notice under Section 18 of the *Residential Tenancies Act, 2018*.
18. The tenants have acknowledged providing a verbal notice along with a text message notice on 12 November 2018. In either regard, this would not constitute a valid notice to terminate. The landlords efforts to mitigate their loss is recognized as reasonable efforts and therefore the tenants are thereby found to be responsible for rent for the period of December 1 – 31 , 2018 only in lieu of the 1 month notice required under the legislation. The landlords' claim for rent in lieu of notice succeeds in the amount of **\$1500.00**.

Decision

19. The landlords' claim for rent in lieu of notice succeeds in the amount of \$1500.00.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

20. The landlords are seeking payment of late fees as a result of the tenants' failure to pay rent on time.
21. Landlord1 testified that the tenants have been in arrears since 1 December 2018. Landlord1 indicated that they are seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

22. Established by undisputed fact above, the tenants were in arrears for the period beginning 01 December 2018. 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.
23. Given that the tenants have been in arrears since 01 December 2018, any calculated amount would far exceed the maximum allowable of \$75.00 per late period.
24. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlords.

Decision

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

Issue 3: Payment of Utilities - \$151.78

Relevant Submissions

Landlord Position

26. The landlords are claiming for the payment of utilities for the period of rent in lieu of notice as claimed above.
27. Landlord1 testified that given the tenants failed to provide proper notice of termination, they are as well responsible for the associate utilities to the property for the same period. The landlords are claiming a cost for utilities in the amount of \$151.78 for the periods of December 2018 and January 2019. The landlord did not provide any receipts for the claim of utilities of the electrical expenses.

Tenant Position

28. The tenants' testified that they had nothing to add to this portion of the claim.

Analysis

29. This portion of the claim is very simple and is basically an extension of the claim for rent in lieu of notice. The landlords are correct in their assumption that given the tenants have been found responsible for rent for a specified period as rent in

lieu of notice, that they are also responsible for any associated electrical costs to the property given they were responsible for this expense in a normal sense of the agreement.

30. The landlords however, are still required to demonstrate the costs associated with the claim and in that regard has failed to provide any receipts or invoices for the costs associated with the electrical expenses for the period. As such, I find that the landlords have failed to substantiate their claim for utilities with the required evidence and therefore the claim fails.

Decision

31. The landlords' claim for utilities fails.

Summary of Decision

32. The landlords are entitled to the following:

a)	Rent Owing	\$1500.00
b)	Late Fees	<u>75.00</u>
c)	Total owing to Landlords	<u>\$1575.00</u>

01 April 2020

Date

Michael Greene
Residential Tenancies Tribunal

