

## **Residential Tenancies Tribunal**

Decision 19-0042-03

Michael Greene  
Adjudicator

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### **Introduction**

1. The hearing was called at 1:30 pm on 03 June 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
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 weekly rental agreement with rent set at \$337.50 per week and due on the 1<sup>st</sup> of the tenancy and weekly thereafter. It was stated that a security deposit in the amount of \$650.00 was collected on the tenancy on or about 01 January 2018. Both parties to the hearing agreed in writing to dispose of the security deposit in lieu of damages to the property during the tenancy. The landlord issued a termination notice via Face Book Messenger dated 01 February 2019 for the intended termination date of 01 March 2019 under no specific section of the *Residential Tenancies Act, 2018*. The landlord recovered the premises on 01 March 2019.
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 tenant was served with the notice of this hearing on the **01 May 2019** by serving the application for dispute resolution document to the email address: [REDACTED] and [REDACTED]. Verification of the email was attached.

The tenant has had **32 days** to provide a response for the hearing date set for 03 June 2019.

Phone calls were placed to the listed numbers for the tenant with the following results:

[REDACTED] – No answer

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 hearing to:

- a. Reduce the amount of rent being claimed from \$1000.00 to \$500.00 as the tenant made a payment on 02 May 2019.

## Issues before the Tribunal

8. The landlord is seeking the following:

- a) Payment of rent owing **\$500.00**
- b) Late Fees **\$75.00**
- c) Compensation for Inconvenience **\$100.00**
- d) Hearing expenses

## Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. 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 - \$500.00

#### Relevant Submissions

##### Landlord Position

11. The landlord stated that both parties had entered into a written weekly rental agreement, commencing 01 January 2018. The agreed rent was set at \$500.00 per week and due on the 1<sup>st</sup> day of the tenancy and weekly thereafter with a security deposit in the amount of \$650.00 collected on 01 January 2018. Both parties to the hearing agreed in writing to dispose of the security deposit in lieu of damages to the property during the tenancy. The landlord issued a termination notice via face book messenger on 01 February 2019 for the intended date of 01 March 2019. The landlord testified that the tenant vacated on or about 01 March 2019. The landlord further stated that rent was outstanding in the amount of \$500.00 as of 02 May 2019 (**Exhibit L # 1**). As of the hearing date 03 June 2019 rent remains outstanding. The landlord additionally submitted a copy of the communications with the tenant (**Exhibit L # 2**).

#### Analysis

12. 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.
13. 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. 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. The landlord terminated the tenancy on 01 February 2019 and legally recovered the unit on 01 March 2019 when the tenant vacated. Based on the evidence provided I find that rent for the period ending 28 February 2019 is outstanding in the amount of **\$500.00**.

## Decision

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

- a) Rent owing up to 28 February 2019 ..... \$500.00
- b) Total Rent Outstanding..... \$500.00**

## Issue 2: Payment of Late Fees - \$75.00

### Landlord Position

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

The landlord testified that the tenant has been in arrears since the beginning of the tenancy. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

### Analysis

- 16. Established by undisputed fact above, the tenant was in arrears for the period ending 03 June 2019. 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.
- 17. Given that the tenant has been in arrears since mid February 2019, any calculated amount of late fees will exceed the maximum allowable per late period of \$75.00.
- 18. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

## Decision

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

### **Issue 3: Compensation for Inconvenience - \$100.00**

#### Landlord Position

20. The landlord testified that as a direct result of a domestic disturbance between the tenant and her boyfriend, the peaceful enjoyment of the tenants in the adjoining unit was interfered with and the landlord compensated them \$100.00 off their rent for the disturbance and inconvenience. The landlord submitted a copy of an email received from the adjoining tenants (**Exhibit L # 4**) and referred to the messages between the landlord and tenant (**Exhibit L # 2**).

#### **Analysis**

21. I have reviewed the testimony and evidence of the landlord in this matter. There is no doubt that there was a disturbance with the tenant and her then boyfriend. This is evidence in the complaint from the adjoining tenants and the communications with the landlord. Also, the landlord is clear to the adjoining tenants, that an amount of \$100.00 can be deducted for the rent.

22. I find that this is a reasonable expense of the landlord to compensate the adjoining tenants for an obvious disturbance. As such, the landlord's claim for compensation for inconvenience is successful.

#### **Decision**

23. The landlord's claim for compensation for inconvenience is successful in the amount of \$100.00.

#### **Summary of Decision**

24. The landlord is entitled to the following:

a)	Rent Owing (up to and including 28 February 2019) .....	\$500.00
b)	Late Fees.....	75.00
b)	Compensation for Inconvenience .....	<u>\$100.00</u>
c)	<b>Sub-total .....</b>	<b><u>\$675.00</u></b>
e)	Total owing to Landlord.....	<u><b>\$675.00</b></u>

3 February 2020

Date

Michael Greene  
Residential Tenancies Tribunal