

Residential Tenancies Tribunal

Decision 19-0082-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 10 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 the landlord, participated in the hearing and was represented by the owner [REDACTED]. (Sworn)
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 monthly rental agreement with rent set at \$1150.00 per month exclusive of utilities and due on the 1st of each month. It was stated that a security deposit in the amount of \$537.50 was collected on this tenancy on or about 01 August 2017. The tenant issued a termination notice dated 30 January 2019 for the intended termination date of 28 February 2019 Section 18 of the *Residential Tenancies Act, 2018*.
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 the tenant was served with the notice of this hearing on the **14 August 2019** by serving the application for dispute resolution document to the tenant personally by way of process server.

The tenant has had **56 days** to provide a response.

The tenant failed to log into the teleconference at 9:00am and after 9:22am the conference call was terminated.

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.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Payment of rent owing **\$3450.00**
 - b) Application of Security Deposit
 - c) Hearing expenses

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 - \$3450.00

Relevant Submissions

Landlord Position

10. The landlord stated that he entered into a written monthly rental agreement with the tenant, commencing 01 August 2017 for the unit at [REDACTED] [REDACTED]. The agreed rent was set at \$1150.00 per month excluding utilities and due on the 1st day of each month. There was a security deposit in the amount of \$537.50 collected on this tenancy on or about 01 August 2017. The tenant issued a termination notice on 30 January 2019 for the intended date of 28 February 2019 (copy not submitted) and indicated that the tenant vacated on or about 02 February 2019. The landlord submitted a copy of the rental agreement (**Exhibit L # 1**) along with a copy of the rental records (**Exhibit L # 2**). The landlord stated that as of 28 February 2019 \$3450.00 was owed.

Analysis

11. 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.
12. With respect to the arrears being claimed, I agree with the landlord that rent is owed. 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. It has been presented that the tenant terminated the tenancy for the 28 February 2019 and vacated on or about 02 February 2019.
13. Records show that rent for the period ending 28 February 2019 is outstanding in the amount of **\$3450.00**.

Decision

14. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 28 February 2019 \$3450.00
 - b) Total Arrears **\$3450.00**

Issue 2: Hearing Expenses

Landlord Position

15. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 3**). The landlord further paid a fee in the amount of \$25.00 for the services of the process server for the service of claim documents.

Analysis

16. 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 of the landlord in the amount of \$45.00.

Decision

17. The tenant shall pay the reasonable expenses of the landlord in the amount of \$45.00.

Issue 3: Application of Security Deposit

Landlord Position

18. The landlord testified that a security deposit in the amount of \$537.50 was paid on the property on or about 01 August 2017. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Analysis

19. Established by undisputed facts above, the tenant did pay a security deposit to the landlord in the amount of \$537.50. The landlord's claim has been successful and the tenant owes the landlord for rent and hearing expenses. The interest rate set out by the Minister on security deposits for 2017 - 2019 is set at 0%. The security deposit plus accrued interest then is \$537.50.

Decision

20. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held against any amount outstanding as directed in the attached order.

Summary of Decision

21. The landlord is entitled to the following:

a)	Rent Owing (up to and including 28 February 2019)	\$3450.00
b)	Hearing Expenses	<u>45.00</u>
c)	Sub-total	\$3495.00
b)	LESS: Security Deposit	<u>(\$537.50)</u>
b)	Total owing to Landlord	<u>\$2957.50</u>

10 February 2020

Date

Michael Greene
Residential Tenancies Tribunal