

Residential Tenancies Tribunal

[REDACTED] Decision 19-0117-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:45pm on 23 January 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and by Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing (*affirmed*) and was represented by [REDACTED] (*affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant participated in the hearing (*sworn*).
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$800.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$500.00 was collected on the tenancy on or about 14 November 2017. The tenant issued a verbal termination notice on 24 July 2019 with no stated termination date. There was a debate to the vacating date of the tenant. The landlord indicated the tenant vacated on or about 03 October 2019 and the tenant states she vacated on or about 17 August 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 named tenant, [REDACTED], was removed from the claim after it was determined from both parties that [REDACTED] moved from the unit in 2018 and the landlord was aware of the move and did not raise any concerns with the move.
7. The landlord was represented by [REDACTED] by way of an authorization letter on file and took the affirmation at the hearing.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$1600.00**
 - b) Late Fees **\$75.00**
 - c) 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 - \$1600.00

Relevant Submissions

Landlord Position

11. The landlord is seeking payment of rent for the months of August and September 2019 that he claims were not paid in the amount of \$800.00 per month for a total of \$1600.00. The landlord testified that he was hospitalized in August and September 2019 and never deposited the rent cheques for those months until October 2019. The landlord testified that they were returned as NSF (non-sufficient funds) (**Exhibit L # 1**) and stated that rent for August and September 2019 remains outstanding. The landlord has not rented the property after this tenancy by personal choice.

Tenant Position

12. The tenant testified that she notified the landlord of her vacating the property both verbally and in a written notice. She testified that she gave the landlord the verbal notice on or about 24 July 2019 that she was moving. The tenant testified that she did not have a copy of the written notice that was issued to the landlord.
13. The tenant testified that she had moved into a new property and paid rent there for August 2019. The tenant supplied copies of her bank records for July and August 2019 (**Exhibit T # 1**). The withdrawals for July were two cheques of \$1000.00 each with no descriptors or copies of the cheques. The August transactions show an e-transfer on 01 August 2019 for \$500.00 to a [REDACTED] and an e-transfer to the same person on 27 August 2019 in the amount of \$800.00.
14. The tenant testified she does not feel responsible for the rent as she was not in the property and notified the landlord of this.

Analysis

15. I have reviewed the testimony and evidence of the landlord and tenant 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.
16. With respect to the arrears being claimed, it is the applicant's responsibility to show beyond the balance of probabilities that the rent being claimed was not paid and was required to be paid. Records are clear that the post-dated cheques for August and September 2019 were returned as NSF. Further, the tenant acknowledged that the payments were not made as she did not feel she was required to pay them as it was her opinion that she was not under contract to this landlord any longer.
17. The landlord testified that he did not receive any notice of termination and did not deposit the cheques until October as he was in hospital. The tenant is arguing that she provided a notice of termination as required in writing but didn't have a copy of the notice. She further stated that she sent a text to the landlord as well but this was not supplied into evidence.
18. On the face of the evidence, there is something not sitting right with this claim. There is no doubt that rent was not paid but the question remains, was it required to be paid? The tenant has testified that she vacated on or about 17 August 2019 which clearly indicates that rent for the month of August 2019 is due by the tenant. Additionally, there has been no notice of termination supplied ending the landlord and tenant relationship which indicates that potentially the tenant could be responsible for rent in lieu of proper notice. However, the landlord clearly indicated that he chose not to rent the property until he knew what was going on. The action of the landlord to not attempt to re-rent the property go directly against the landlord's requirement to mitigate any potential losses.

19. In this case I agree with the landlord and the tenant. 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. Rent cannot be withheld without the direction through an order of the Residential Tenancies Division. Based on the evidence provided I find that rent for the period ending 31 August 2019 is outstanding in the amount of **\$800.00** as the tenant had use and occupation of the property for this month. It is clear that there is no record of a notice of termination in evidence and that the landlord chose not to re-rent the property. Rent for the month of September 2019 is not awarded as the landlord has failed to mitigate his potential losses by attempting to re-rent the property. It was the landlord's choice not the re-rent and he cannot now hold this against the tenant. As such, the landlord's claim succeeds in the amount of **\$800.00**.

Decision

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

a) Rent owing up to 31 August 2019 \$800.00

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

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

22. The landlord testified that the tenant has been in arrears since 01 August 2019. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Tenant Position

23. The tenant had no comment.

Analysis

24. Established above, the tenant was in arrears for the period August 1 – 31, 2019. 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. Given that the tenant has been in arrears since 01 August 2019, the calculated amount of late fees is:

a. 1 st Day late (August 2, 2019)	\$5.00
b. Remaining days (August 3-31, 2019 @ \$2)	<u>58.00</u>
c. Total Late Fees	<u>\$63.00</u>

26. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

27. The landlord's claim for late fees succeeds in the amount of \$63.00 as per the regulations established under the *Residential Tenancies Act, 2018*.

Issue 3: Application of Security Deposit

Landlord Position

28. The landlord testified that a security deposit in the amount of \$500.00 was paid on the property on or about 14 November 2017. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Tenant Position

29. The tenant is seeking the refund of the security deposit.

Analysis

30. Established by undisputed facts above, the tenant did pay a security deposit to the landlord in the amount of \$500.00. The landlord's claim has been successful and the tenant owes the landlord for rent and late fees. 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 \$500.00.

Decision

31. 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

32. The landlord is entitled to the following:

a)	Rent Owing (up to and including 31 August 2019).....	\$800.00
b)	Late Fees.....	<u>63.00</u>
c)	Sub-total	\$863.00
d)	LESS: Security Deposit	<u>(\$500.00)</u>
e)	Total owing to Landlord	<u>\$363.00</u>

25 March 2020

Date

Michael Greene
Residential Tenancies Tribunal

