

Residential Tenancies Tribunal

Decision 20-0002-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 04 February 2020** 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 landlord, participated in the hearing (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant1 participated in the hearing (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as the tenant2 participated in the hearing (*Affirmed*).
5. The details of the claim were presented as a written fixed term rental agreement with rent set at \$900.00 per month and due on the 1st of each month and the agreement set to expire on 30 September 2020. A security deposit in the amount of \$500.00 was collected on the tenancy on or about 01 October 2019. The landlord issued a termination notice dated 15 January 2020 for the intended termination date of 26 January 2020 under Section 19 of the *Residential Tenancies Act, 2018*.
6. 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

7. The landlord amended that claim at the hearing to remove the request for vacant possession as the tenants have vacated the property on or about 16 January 2020.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$900.00**
 - b) Payment of Late Fees **\$75.00**
 - c) Hearing expenses **\$20.00**
 - d) Application of Security Deposit

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 - \$900.00

Relevant Submissions

Landlord Position

11. The landlord stated that she has indicated the details of the tenancy in paragraph 5 above. The landlord testified that the tenant failed to pay rent for the period ending 31 January 2020 (**Exhibit L # 1**). The landlord issued a termination notice (**Exhibit L # 2**) on 15 January 2020 for the intended date of 26 January 2020 (section 19). The landlord testified that as of the date the tenants vacated the property (16 January 2020), the tenants failed to pay the rent due.
12. The landlord had indicated that she would allow an alternate payment arrangement, but the tenants decided to withhold the rent.

Tenant Position

13. The tenants testified that they withheld the rent because issues with the property were not addressed by the landlord. The tenants testified that the house was damp with mold and complained that the property was cold. The tenants testified that they did not formally request repairs to the property as outlined in Section 32 of the *Residential Tenancies Act, 2018*.
14. The tenants stated that the following were their concerns:
 - a. House was cold
 - b. Mildew on windows
 - c. Mold found in the lower level
 - d. Furnace wasn't working
15. The tenants argue that the conditions have been ongoing for several months and as such withheld the rent.

Analysis

16. I have reviewed the testimony and evidence of the landlord 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 landlord actually owed by the tenants.
17. 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 tenants for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. The tenants have acknowledged that they have withheld rent and did not follow the accepted process outlined in the *Residential Tenancies Act, 2018* to have concerns addressed.
18. The tenants by withholding rent, has constructively terminated the tenancy by forcing the landlord to issue a notice for non-payment of rent. This action of the tenants would permit the landlord to claim for rent beyond the date that they terminated the tenancy. As such, I find that the landlord is entitled to rent for the month of January 2020 in the amount of **\$900.00** for the loss created by the negligent actions of the tenants.

Decision

19. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 31 January 2020..... \$900.00

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

20. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
21. The landlord testified that the tenants have been in arrears since 01 January 2020. The landlord indicated that she is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

22. Established by undisputed fact above, the tenant was in arrears for the period ending 31 January 2020. 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 January 2020, any calculated amount of late fees will exceed the maximum allowable under regulation.
24. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlord.
25. As such, the landlord's claim for late fees is successful in the amount of \$75.00.

Decision

26. 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: Hearing Expenses

Landlord Position

27. 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 # 4**). The landlord is seeking this expense.

Analysis

28. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord is 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

29. The tenants shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Issue 4: Application of Security Deposit

Landlord Position

30. The landlord testified that a security deposit in the amount of \$500.00 was paid on the property on or about 01 October 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

Tenant Position

31. The tenants acknowledged for the landlord to offset the security deposit against any order.

Analysis

32. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$500.00. The landlord's claim has been successful in part. The security deposit plus accrued interest is \$500.00 as the interest rate for 2019 – 2020 is set at 0%.

Decision

33. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held against the attached Order as outlined in the attached.

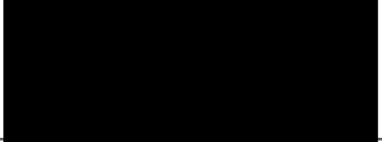
Summary of Decision

34. The landlord is entitled to the following:

a)	Rent Owing (up to and including 31 January 2020)	\$900.00
b)	Late Fees.....	75.00
c)	Hearing Expenses	<u>\$20.00</u>
d)	Sub-total	\$995.00
e)	LESS: Security Deposit	<u>(\$500.00)</u>
f)	Total Owing to the Landlord	\$495.00

03 April 2020

Date


Michael Greene
Residential Tenancies Tribunal