

Residential Tenancies Tribunal

[REDACTED] Decision 20-0004-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:45 am on **26 February 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*).
3. The respondent, [REDACTED], hereafter referred to as the tenant1, did not participate in the hearing.
4. The respondent, [REDACTED], hereafter referred to as the tenant2, did not participate in the hearing.
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$700.00 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 06 November 2019. The landlord issued an abandonment notice on 06 January 2020 and recovered the property on 07 January 2020.
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 tenants, [REDACTED] & [REDACTED], were 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 show that tenant1 was served with the notice of this hearing on the **13 February 2020** by serving the application for dispute resolution document to tenant1 at the email: [REDACTED]. A copy of the sent email and verification of the email previously used between the parties. The tenant has had **13 days** to provide a response.

The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **13 February 2020** by serving the application for dispute resolution document to tenant2 at the email:

[REDACTED]. A copy of the sent email and verification of the email previously used between the parties. The tenant has had **13 days** to provide a response.

Contact was made to the tenants at [REDACTED] and a message was left.

As the tenants were 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.

8. The amount being sought by the landlord for the removal and changing of locks has been removed as this is seen as a prudent measure of the landlord to secure the security of future tenants and as such, is a cost of doing business for the landlord.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Payment of rent in lieu of notice **\$700.00**
 - b) Payment of Late Fees **\$75.00**
 - c) Compensation for Inconvenience **\$194.00**
 - d) Hearing expenses

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. 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 - \$700.00

Relevant Submissions

Landlord Position

12. The landlord is seeking payment of rent in the amount of \$700.00 for the month of January 2020 that was not paid when the tenants abandoned the property. The landlord testified that the tenants left the property sometime between 15 December 19 and 31 December 2019 as close as she can determine and did not provide any notice.
13. The landlord testified that she posted an abandonment notice on the property on 06 January 2020 and recovered the unit on 07 January 2020 (**Exhibit L # 1**). The landlord testified she never received rent for January 2020 and submitted a copy of the rental agreement (**Exhibit L # 2**) establishing the tenancy.
14. The landlord testified that she was able to re-rent the property for 01 February 2020.

Analysis

15. 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 tenants.
16. With respect to the rent in lieu of notice being claimed, it is obvious from the landlord evidence that the tenants left the unit and did not provide any notice as required by the *Residential Tenancies Act, 2018*. A proper notice to terminate a tenancy is required by the party to the agreement seeking to terminate the tenancy. As the tenants failed to provide any notice thereby forcing the landlord to recover the unit adversely through abandonment, and the landlord has mitigated her loss by re-renting the property for the following month (01 February 2020), I find that the tenants are responsible for rent for the month of January 2020 in the amount of **\$700.00**.

Decision

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

a) Rent owing up to 31 January 2020..... \$700.00

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

18. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent for January 2020.

19. 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

20. Established above, the tenants were in arrears for the period beginning 01 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.

21. Given that the tenants have been in arrears since 01 January 2020, the calculated amount of late fees is:

a. 1 st Day late (02 January, 2020)	\$5.00
b. Remaining days (January 3-31, 2020 @ \$2)	58.00
c. Total Late Fees	<u>\$63.00</u>

22. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlord.

Decision

23. 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: Compensation for Inconvenience - \$194.00

Landlord Position

24. The landlord testified that she incurred an expense in the amount of \$194.00 related to inventorying and packing the tenants belongings abandoned at the property as well as the costs associated with cleaning the unit.
25. The landlord testified that she is claiming the following labor at a rate of \$19.40/hr.
 - a. Labor to inventory & pack tenants belongings – 6 Hours @ \$19.40 = \$116.40.
 - b. Labor to clean the apartment – 4 Hours @ \$19.40 = \$77.60
26. The landlord referred to photos submitted with her application for abandoned personal property (2020-2) (**Exhibit L # 3**). She testified that these photos clearly show the items required to pack and inventory as well as the condition the tenants left the unit in.

Analysis

27. I have reviewed the testimony and evidence of the landlord in this matter. There is no doubt that the unit was abandoned and the landlord was tasked to clean and pack the belongings of the tenants. This I find to be an inconvenience to the landlord. The labor charges are more than reasonable in this claim and therefore I find the landlord's claim to be successful in the amount of \$194.00.

Decision

28. The landlord's claim for compensation for inconvenience is successful in the amount of \$194.00.

Issue 4: Application of Security Deposit

Landlord Position

29. The landlord testified that a security deposit in the amount of \$500.00 was paid on the property on or about 06 November 2019. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Analysis

30. Established by undisputed facts above, the tenants did pay a security deposit to the landlord in the amount of \$500.00. The landlord's claim has been successful and the tenants owe the landlord for rent, late fees and inconvenience. The interest rate set out by the Minister on security deposits for 2019 - 2020 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.

Issue 5: Hearing Expenses

Landlord Position

32. 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 # 5**). The landlord is also seeking a cost to develop photos in the amount of \$6.00. No receipt was submitted into evidence. The landlord is seeking these expenses.

Analysis

33. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlords 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*. The landlord has failed to provide a receipt for the photo development and therefore this expense is not able to be awarded. As such, I find the tenants are responsible to cover the reasonable expense of the application filing fee in the amount of \$20.00.

Decision

34. The tenants shall pay the reasonable expense of the landlord in the amount of \$20.00.

Summary of Decision

35. The landlord is entitled to the following:

a)	Rent Owing (up to and including 31 January 2020)	\$700.00
b)	Late Fees.....	63.00
c)	Compensation for Inconvenience	194.00
d)	Hearing Expenses	20.00
c)	Sub-total	\$977.00
d)	LESS: Security Deposit	<u>(\$500.00)</u>
e)	Total owing to Landlord	<u>\$477.00</u>

03 April 2020

Date

Michael Greene
Residential Tenancies Tribunal