

Residential Tenancies Tribunal

Decision 20-0010-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **2:30 pm on 27 October 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 landlord1, participated in the hearing (*Affirmed*).
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as the tenant did not participate in the hearing (*Absent and not represented*).
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$900.00 per month, utilities included and due on the 1st of each month. A security deposit in the amount of \$200.00 was collected on the tenancy on or about 17 February 2020. The tenant sent a text to the landlord on 01 March 2020 to terminate the tenancy.
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 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 landlords show that the tenant was served with the notice of this hearing on the **28 July 2020** by serving a copy of the documents to the tenant by email: [REDACTED] and attaching a copy of the sent email.

A phone call was placed to the numbers on file for the tenant with no answer. A message was left.

8. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.

Issues before the Tribunal

9. The landlords are seeking the following:
 - a) Payment of rent owing **\$900.00**
 - b) Cleaning **\$200.00**
 - c) Application of Security Deposit

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 - \$900.00

Relevant Submissions

Landlord Position

12. Landlord2 stated that she is not aware exactly when the tenant vacated the property. She referred to a message received from the tenant indicating he had moved because of an ill family member (**Exhibit L #3**). Landlord2 testified that the tenant failed to pay rent for the period ending 31 March 2020 (**Exhibit L # 1**). Landlord2 testified that as of the end of 31 March 2020, the tenant still had personal belongings in the property which were removed. Landlord2 testified that the tenant failed to pay March rent in the amount of \$900.00 and she is seeking this amount as rent in lieu of notice.

Analysis

13. 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 landlords actually owed by the tenant.
14. With respect to the rent in lieu of notice being claimed, I agree with the landlord that no formal valid notice was served and therefore 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. In lieu of a proper notice of termination, the tenant is responsible to pay rent for the notice period.
15. The tenant abandoning the unit, has constructively terminated the tenancy. As such, I find that the landlords are entitled to rent for the month of March 2020 in the amount of **\$900.00** for the loss created by the abandonment of the tenant.

Decision

16. The landlords' total claim for rent succeeds as follows:
 - a) Rent owing up to 31 March 2020 \$900.00

Issue 2: Cleaning - \$200.00

Landlord Position

17. The landlords are seeking compensation for the cleaning of the property after the tenant vacated, including removing personal belongings of the tenant. There was no affidavit of abandonment filed with Residential Tenancies as required by the *Residential Tenancies Act, 2018*.
18. In addition, the landlords did not provide any photos, condition reports or witnesses to demonstrate the condition of the property.

Analysis

19. The landlords are claiming for cleaning of the property but has failed to provide any supporting evidence to substantiate the claim that the property required cleaning. In addition, the landlords have failed to abide by the legislation to file an affidavit of abandoned property and is now seeking compensation to discard the same property.
20. It is not the role of this tribunal to award compensation to an applicant when there is a direct violation of the Act in and of itself. Additionally, the landlords have failed to support the claim by showing the condition of the property. On both accounts, the landlords' claim for cleaning fails.

Decision

21. The landlords' claim for cleaning fails.

Issue 4: Application of Security Deposit

Landlord Position

22. The landlords testified that a security deposit in the amount of \$200.00 was paid on the property on or about 17 February 2020. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.

Analysis

23. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$200.00. The landlords' claim has been successful in part. The security deposit plus accrued interest is \$200.00 as the interest rate for 2020 is set at 0%.

Decision

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

Summary of Decision

25. The landlords are entitled to the following:

a)	Rent Owing (up to and including 31 March 2020).....	\$900.00
b)	Cleaning.....	<u>.000.00</u>
c)	Sub-total	\$900.00
d)	LESS: Security Deposit	<u>(\$200.00)</u>
e)	Total Owing to the Landlords	\$700.00

15 December 2020

Date

Michael Greene
Residential Tenancies Tribunal