

## Residential Tenancies Tribunal

Decision 20-0023-01

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **1:45 pm on 14 October 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and 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 tenant1, did not participate in the hearing. (*Absent and Not Represented*).
4. The respondent, [REDACTED], hereafter referred to as tenant2, did not participate in the hearing. (*Absent and Not Represented*).
5. In a proceeding under the *Residential Tenancies Act*, 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 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 shows that tenant1 was served with the notice of this hearing on the **19 June 2020** by serving a copy of the documents to tenant1 by email: [REDACTED] and attaching a copy of the sent email.

The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on **19 June 2020** by serving a copy of the documents to tenant2 by email: [REDACTED] and attaching a copy of the sent email.

The hearing was subsequently rescheduled by Residential Tenancies and both parties were served by Residential Tenancies of the new date and time (**14 October @ 1:30pm**)

A phone call was placed to the numbers on file for the tenants and tenant2 advised she wouldn't be attending but would contact her husband. Neither attended.

7. As the tenants were 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 tenants' absence.

### **Issues before the Tribunal**

8. The landlord is seeking the following:
  - a) Payment of rent owing **\$5600.00**;
  - b) Payment of Utilities **\$103.07**;
  - c) Other: Snow Clearing **\$115.00**;
  - d) 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 - \$5600.00**

### **Relevant Submissions**

#### Landlord Position

11. The landlord stated that she entered into a written fixed term rental agreement with the tenants with the agreed rent set at \$1400.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$700.00 collected on this tenancy on or about 07 September 2019. The landlord presented the arrears with rental records (**Exhibit L # 2**) as total rent outstanding is \$5600.00 up to and including 30 June 2020. The landlord stated as of the hearing date 15 October 2020 rent is outstanding.
12. The landlord testified that the tenants abandoned the unit which was recovered on **13 March 2020**. She stated she immediately listed the property for rent on Facebook Classifieds with no success. The landlord indicated that she moved into the property on 01 July 2020 and sold the property on or about 20 August 2020.

### **Analysis**

13. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenants.
14. With respect to the arrears being claimed, there was a fixed term rental agreement that the tenants abandoned without notice. On abandonment the landlord is required to mitigate potential losses and has done so by placing the property for rent and for sale. The tenants are responsible for the contractual obligations for which they enter into, to the conclusion of the contract. I find that the tenants in this case is responsible for the rent for the remaining balance of the contract in the amount of \$5600.00.

### **Decision**

15. The landlord's total claim for rent succeeds as in the amount of \$5600.00

## **Issue 2: Payment of Utilities - \$103.07**

#### Landlord Position

16. The landlord is seeking payment of the final month of utilities (17 March 20 – 01 April 2020) in the amount of \$103.07 as a part of the contractual obligations the tenant has in the rental agreement.

17. The landlord submitted a copy of the NL Power invoice for the period (**Exhibit L # 4**).

### **Analysis**

18. As indicated above, the tenants are legally responsible for the contractual obligations of the rental contract which they entered into. The utilities are one portion of this obligation and as such I find the tenants are responsible for the utilities claimed by the landlord in the amount of \$103.07.

### **Decision**

19. The landlord's claim for utilities succeeds in the amount of **\$103.07**.

## **Issue 3: Payment of snow clearing - \$115.00**

### Landlord Position

20. The landlord is seeking payment of snow clearing in the amount of \$115.00 as a part of the contractual obligations the tenants have in the rental agreement.
21. The landlord submitted a copy of the e-transfers (**Exhibit L # 5**) to the operator who was hired to clear the snow on 13 March and 29 March 2020.

### **Analysis**

22. As indicated above, the tenants are legally responsible for the contractual obligations of the rental contract which they entered into. The snow clearing is one portion of this obligation and as such I find the tenants are responsible for the snow clearing claimed by the landlord in the amount of \$115.00.

### **Decision**

23. The landlord's claim for snow clearing succeeds in the amount \$115.00.

## **Issue 4: Hearing Expenses**

### Landlord Position

24. 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 # 6**). The landlord is seeking this cost.

## **Analysis**

25. 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 tenants are responsible to cover these reasonable expenses.

## **Decision**

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

## **Issue 5: Application/Refund of Security Deposit**

### Landlord Position

27. The landlord testified that a security deposit in the amount of \$700.00 was paid on the property on or about 07 September 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
28. The landlord acknowledges holding the security deposit in the amount of \$700.00.

## **Analysis**

29. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$700.00.
30. The landlord's claim has been successful as indicated above. The security deposit plus accrued interest is \$700.00 as the interest rate for 2019 – 2020 is set at 0%.
31. As the landlord's claim is successful in part as indicated above, the claim against the security deposit being held by the landlord also succeeds. The security deposit is an asset of the tenants to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was an attributable loss and as such, the landlord shall offset the security deposit against the amount outstanding as determined in this decision and the attached order.

## Decision

32. As the landlord's claim above has been successful, the landlord shall offset the security deposit as indicated in the attached order.

## Summary of Decision

33. The landlord is entitled to the following:

a)	Rent Owing (up to and including 15 July 2020).....	\$5600.00
b)	Utilities .....	103.07
c)	Snow Clearing .....	115.00
d)	Hearing Expenses .....	<u>\$20.00</u>
e)	<b>Sub-total .....</b>	<b>\$5838.07</b>
f)	<b>LESS: Security Deposit .....</b>	<b><u>(\$700.00)</u></b>
g)	<b>Total Owing to Landlord.....</b>	<b>\$5138.07</b>

15 December 2020

Date

Michael Greene  
Residential Tenancies Tribunal