

Residential Tenancies Tribunal

Decision 20-0025-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm** on **08 March 2021** 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 the landlord, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED] referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$1100.00 per month with utilities excluded, due on the 1st of each month. A security deposit in the amount of \$500.00 was collected on or about 01 May 2018.
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 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 landlord shows that the tenant was served with the notice of this hearing on the **03 November 2020** by serving the original documents to the tenant personally (via Process Server).

A phone call was placed to the tenant at the phone number on file [REDACTED]. A female answered and abruptly indicated it was the wrong number.

The tenant has had **124 days** to provide a response.

7. 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

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$3400.00**;
 - b) Payment of late fees **\$75.00**;
 - c) Damages **\$4686.05**;
 - d) Application of Security Deposit;
 - e) 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:
 - a. Section 31 of *the Act*; and;
 - b. Policy 6: *Abandonment*;
 - c. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*; and;
 - d. Policy 9-3: *Claims for Damages to Rental Premises*; and;
 - e. Policy 9-5: *Life Expectancy of Property*.

Issue 1: Rent Owing - \$3400.00

Relevant Submissions

Landlord Position

11. The landlord stated that he had entered into a written monthly tenancy with the tenant with rent set at \$1100.00 per month, due on the 1st day of each month and a security deposit in the amount of \$500.00 collected on or about 01 May 2018.
12. The landlord testified that rent is outstanding in the amount of **\$3400.00** up to and including 15 July 2019 (**Exhibit L # 1**). The landlord testified that the tenant had abandoned the property so he posted the notice and recovered the unit. The landlord submitted into evidence a copy of the rental agreement (**Exhibit L # 2**).

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 tenant.
14. With respect to the arrears being claimed, I am satisfied that the tenant did not pay rent as required and abandoned the property on or about 15 May 2019. 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.
15. The tenant abandoned the property in May for which rent was due on 01 May 2019. I find the tenant responsible for rent up to 31 May 2019.
16. The landlord is also claiming for rent up to 15 July 2019 as lost rent because of damages. The landlord's claim below for damages has not been successful to make such an award for lost rent. As such, I find that the tenant owes rent determined as follows:

a. Rent up to 31 May 2019:	\$1750.00
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Decision

17. I find the landlord's claim for rent is successful in the amount of **\$1750.00**.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

18. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
19. The landlord testified that the tenant owes rent since April 2019. The landlord indicated that he is claiming late fees allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

20. Established by undisputed fact above, the tenant does owe rent for the period ending 31 May 2019 as arrears. 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. As the tenant owed rent from April 2019 and rent remains outstanding as of the hearing, a late fee is applicable. A calculated amount of late fees would exceed the maximum allowable of \$75.00. As such, the landlord's claim succeeds in the amount of \$75.00.

Decision

22. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Compensation for Damages - \$4686.05

Relevant Submissions

Landlord Position

23. The landlord testified that on or about 15 May 2019 the property was recovered and damages were noted. The landlord testified that the following was noted:
 - a. Painting Supplies (**\$332.77**)
 - b. Replace Window Dressings (**\$140.53**)
 - c. Replace Door Locks (**44.82**)
 - d. Replace a toilet valve (**\$16.80**)
 - e. Replace 2 interior doors (**\$273.84**)
 - f. Replace the toilet paper holder (**\$30.67**)
 - g. Cleaning Supplies (**\$114.83**)
 - h. Replace Bedroom passage sets (**\$60.34**)
 - i. Purchase a used range (**\$100.00**)

- j. Dumpster Rental (**\$467.45**)
- k. Self-Labor (**\$3104.00**)

24. The landlord testified that the property was left in a disgusting mess. He stated that it took 160 Hours @ a self-labor rate of \$19.40 per hour to clean and repair the damages caused by the tenant. The landlord submitted photos of the damages being claimed (**Exhibit L # 5**) along with a breakdown of the claim (**Exhibit L # 4**) and receipts for the repairs and supplies from various local companies (**Exhibit L # 6 - 17**).

25. The landlord testified that all the windows in the home had blinds and these were missing when the property was recovered. The landlord specifically stated that two interior doors were damaged and had to be replaced.

Analysis

26. The basis of determining awards for any damage claim is the same. The applicant holds the burden of proof and in cases associated with Residential Tenancies is “on the balance of probabilities”.

27. In presenting a claim the applicant is required to

- a. show that a damage exists;
- b. show that the respondent is liable for the damages and;
- c. show a cost for the repair or replacement of the damages.

28. On the matter above, the landlord has provided very little evidence surrounding the damages. The landlord has provided ample invoices and receipts showing the purchase of various items as claimed. However, the landlord has failed to show that all the damages claimed is actually there. The landlord has only provided 4 photos as evidence for a sizeable claim.

29. Further, the landlord is required to establish liability for the tenant. To assess the damage, the tribunal compares a baseline of condition of the property prior to the tenant occupying, to the condition of the property after they vacate. In this matter, there has been no signed incoming condition report or no photos prior to the tenant occupying to establish the baseline of condition.

30. The landlord’s photos submitted shows a dirty range/oven that appears to be certainly cleanable. The landlord is seeking replacement with a used unit at \$100.00. I find it reasonable that the tenant left the range in the presented condition and therefore I find the tenant responsible for cleaning in the amount of \$100.00.

31. With regard to the bed in the garage, the landlord testified that this belonged to another person who was not attached to the property and therefore not subject to this claim against the tenant.

32. For the remainder of the claim for damages, I find that the landlord has failed to establish tenant liability along with failing to establish that the damages were as the landlord is claiming. As such, the balance of the claim for damages does not succeed.

Decision

33. The landlord's claim for damages succeeds in the amount of **\$100.00**.

Issue 4: Payment of Utilities - \$1000.00

Relevant Submissions

Landlord Position

34. The landlord submitted into evidence a copy of a North Atlantic Invoice (**Exhibit L # 3**) for the purchase of ¼ tank of fuel (225 litres) in the amount of \$214.54. The landlord testified that the tank was full at the beginning of the tenancy and when it was recovered at the end of the tenancy, the tank was empty. The landlord testified that he put the minimum amount in the tank to re-start the furnace and get heat in the property.

35. The landlord presented a copy of the rental agreement (**Exhibit L # 2**) and pointed out section 18 of the agreement where the tenant signed acknowledging the fuel level at full.

Analysis

36. It is clear from tenant's acknowledgement in the agreement that the oil tank was full. I accept the testimony of the landlord that the tank was empty upon recovery with the support of the purchase of a minimum amount from North Atlantic as demonstrated by the receipt.

37. The tenant is required to fill the tank at the end of the tenancy and failed to do so. The typical oil tank is a 200 imperial gallon tank or approximately 909 liters. The landlord has demonstrated a cost of \$214.54 + HST for 225 liters with a per liter cost of \$0.9531. The calculated cost of a full tank would be **\$996.33** (909 liters x \$0.9531 = \$866.37 + HST = \$996.33).

Decision

The landlord's claim for the payment of utilities is successful in the amount of **\$996.33**.

Issue 5: Hearing Expenses

Landlord Position

38. 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 # 19**). The landlord further paid a fee to X Force Bailiff (**Exhibit L # 18**) to serve the claim documents in the amount of \$138.00. The landlord is seeking these cost.

Analysis

39. 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 tenant is responsible to cover these reasonable expenses.

Decision

40. The tenant shall pay the reasonable expenses of the landlord in the amount of \$158.00.

Issue 6: Application of Security Deposit

Landlord Position

41. The landlord testified that a security deposit in the amount of \$500.00 was paid on the property on or about 01 August 2018. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

Analysis

42. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$500.00. The landlord's claim has been successful. The security deposit plus accrued interest is \$500.00 as the interest rate for 2018 - 2020 is set at 0%.

Decision

43. As the landlord's claim above has been successful, the landlord shall offset the security deposit being held as determined in the attached Order.

Summary of Decision

44. The landlord is entitled to the following:

a)	Damages	\$100.00
b)	Rent	1750.00
c)	Utilities (Oil Expenses).....	996.33
d)	Late Fees.....	75.00
e)	Hearing Expenses	<u>158.00</u>
f)	Subtotal.....	\$3079.33
g)	LESS: Security Deposit	<u>(\$500.00)</u>
h)	Total owing to Landlord	<u>\$2579.33</u>

18 March 2021

Date


Michael Greene
Residential Tenancies Tribunal