

## Residential Tenancies Tribunal

[REDACTED] Decision 20-0202-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **9:30 am on 29 May 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 landlord1, participated in the hearing. (*Affirmed*).
3. The applicant, [REDACTED], hereafter referred to as landlord2, did not participate in the hearing. (*Absent and Not Represented*).
4. The applicant, [REDACTED], hereafter referred to as landlord3, did not participate in the hearing. (*Absent and Not Represented*).
5. The respondent, [REDACTED], hereafter referred to as tenant1, did not participate in the hearing. (*Absent and Not Represented*).
6. The respondent, [REDACTED], hereafter referred to as tenant2, did not participate in the hearing. (*Absent and Not Represented*).
7. 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

8. The application was AMENDED at the hearing:
  - a. To increase rent being claimed that has come due since the filing of the application. The new amount outstanding is \$2400.00.
  - b. Remove the request for Vacant Possession as the tenants have vacated the property on or about 14 May 2020.
  - c. Remove the claim for damages as the landlord will refile this portion of the claim.
9. 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 landlords show that tenant1 was served with the notice of this hearing on the **12 May 2020** by serving the original documents to tenant1 by electronic means to the email: [REDACTED] along with supporting email documents.

The affidavit submitted by the landlords show that tenant2 was served with the notice of this hearing on the **12 May 2020** by serving the original documents to tenant2 by electronic means to the cell number [REDACTED] along with supporting text message documents.

The tenants have had **17 days** to provide a response.

10. 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

11. The landlords are seeking the following:
  - a) Payment of rent owing **\$2400.00**;
  - b) Payment of late fees
  - c) Hearing expenses.

## Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. 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 - \$2400.00

#### Relevant Submissions

##### Landlord Position

14. The landlord stated that they had entered into a one year fixed term rental agreement with the tenants which expires on 30 November 2020. The agreed rent is set at \$1050.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$600.00 collected on this tenancy on or about 30 November 2019. The landlords demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is \$2400.00 up to and including 31 May 2020. The landlords stated that the tenant vacated the property as of 14 May 2020.

#### Analysis

15. 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 landlords actually owed by the tenants.
16. With respect to the arrears being claimed, I agree with the landlords that rent is owed. Rent is required to be paid by the tenants for use and occupation of the rented premises as set out in the written rental agreement established when the tenancy began. Records are clear that rent for the period ending 30 April has not been paid leaving a balance of **\$1600.00**. Further, rent for May can only be awarded up to the date the tenants vacated as they done so under a notice from the landlords. May 1 – 14, 2020 can only be calculated up to and including the day of the tenants vacated (14 May 2020). That calculation is (\$1050.00 X 12 months = \$12,600.00 ÷ 366 days = \$34.43 per day X 14 days = \$482.02). Rent for May 1 – 14, 2020 is **\$482.02**.

## **Decision**

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

a) Rent owing up to 30 April 2020 .....	\$1600.00
b) Rent owing for May 1 – 14, 2020 .....	<u>482.02</u>
c) Total Arrears .....	<b><u>\$2082.02</u></b>

## **Issue 2: Payment of Late Fees - \$75.00**

### Landlord Position

18. The landlords are seeking payment of late fees as a result of the tenants' failure to pay rent on time.
19. The landlord testified that the tenants have been in arrears on an ongoing basis since September 2019. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

## **Analysis**

20. Established by undisputed fact above, the tenants were in arrears since February 2020. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
21. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlords.

## **Decision**

22. The landlords' claim for late fees succeeds in the amount of the maximum allowable of \$75.00.

## **Issue 3: Application of Security Deposit**

### Landlord Position

23. The landlord testified that a security deposit in the amount of \$600.00 was paid on the property on or about 30 November 2019. The landlords are seeking permission to apply the security deposit against the order issued by the tribunal.

## **Analysis**

24. Established by undisputed facts above, the tenants did pay a security deposit to the landlords in the amount of \$600.00. The landlords' claim has been successful and the tenants owe the landlords for rent and late fees. 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 \$600.00.

## **Decision**

25. As the landlords' claim above has been successful, the landlords shall apply the security deposit being held against any amount outstanding as directed in the attached order.

## **Summary of Decision**

26. The landlords are entitled to the following:

a)	Rent Owing .....	\$2082.02
b)	Late Fees.....	<u>75.00</u>
c)	Total Owing to the Landlords .....	\$2157.02
d)	LESS: Security Deposit.....	<u>(\$600.00)</u>
e)	<b>Total Owing to the Landlords .....</b>	<b><u>\$1557.02</u></b>

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03 June 2020

Date

Michael Greene  
Residential Tenancies Tribunal

