

Residential Tenancies Tribunal

[REDACTED] Decision 20-0331-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **10:45 am** on **29 September 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 the tenant, did not participate in the hearing. (*Absent and Not Represented*).
4. 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

5. The application was AMENDED at the hearing to increase the rent being claimed to \$7131.14 for the period ending 23 September 2020 as a result of rent that has come due.
6. The landlord further amended the application to remove the request for Vacant Possession as the landlord had acquired possession of the property on 23 September 2020.
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 landlord shows that the tenant was served with the notice of this hearing on the **22 August 2020** by serving the original documents to the tenant personally at [REDACTED].

The tenant has had **38 days** to provide a response.

A phone call was placed to the landlord at [REDACTED] and the landlord logged into the hearing.

A phone call was placed to the tenant at [REDACTED] and a message was left to contact the hearing should he wish to be heard.

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 landlord is seeking the following:

- a) Payment of rent owing **\$7131.14**;
- b) Payment of late fees
- c) Vacant possession of the rented premises;
- 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 - \$7131.14

Relevant Submissions

Landlord Position

12. The landlord stated that she had entered into a written fixed term rental agreement with the tenant slated to expire on 31 October 2020. The agreed rent is set at \$1500.00 per month and due on the 1st day of each month with a security deposit in the amount of \$1125.00 collected on this tenancy on or about 31 July 2020. The landlord demonstrated the arrears with rental records (**Exhibit L # 2**) as total rent outstanding is \$7131.14 up to and including 23 September 2020. The landlord stated that the property was recovered on 23 September 2020 as of the hearing date 29 September 2020 rent is outstanding.

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 agree with the landlord that 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 written rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 August 2020 has not been paid leaving a balance of **\$6000.00**. Further, rent for September 1 - 23, 2020 can only be calculated up to and including the day possession was obtained (23 September 2020). That calculation is ($\$1500.00 \times 12 \text{ months} = \$18,000.00 \div 366 \text{ days} = \$49.18 \text{ per day} \times 23 \text{ days} = \1131.14). Rent for September 1 - 23, 2020 is **\$1131.14**.

Decision

15. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 31 August 2020 \$6000.00
 - b) Rent owing for September 1 – 23, 2020..... 1131.14
 - c) **Total due to Landlord.....\$7131.14**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

16. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
17. The landlord testified that the tenant has been in arrears on an ongoing basis since May 2020. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

18. Established by undisputed fact above, the tenant was in arrears since 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.
19. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

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

Issue 3: Hearing Expenses

Landlord Position

21. 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 # 4**). The landlord is seeking this cost.

Analysis

22. 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 tenant is responsible to cover these reasonable expenses.

Decision

23. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

24. The landlord is entitled to the following:

a)	Rent Owing	\$7131.14
b)	Late Fees.....	75.00
c)	Hearing Expenses	<u>\$20.00</u>
d)	Total Owing to the Landlord	\$7226.14

14 October 2020

Date


Michael Greene
Residential Tenancies Tribunal