

Residential Tenancies Tribunal

[REDACTED] Decision 21-0001-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 25 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 landlord1, participated in the hearing. (*Affirmed*).
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing. (*Absent and Not Represented*).
4. The respondent, [REDACTED] referred to as tenant1, did not participate in the hearing. (*Absent and Not Represented*).
5. The respondent, [REDACTED] referred to as tenant2, did not participate in the hearing. (*Absent and Not Represented*).
6. The details of the claim were presented as a written monthly rental agreement with rent set at \$950.00 per month with utilities excluded, due on the 1st of each month. A security deposit in the amount of \$475.00 was collected on or about 15 August 2018.
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 tenants, [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 tenants was served with the notice of this hearing on the **11 February 2020** by serving the original documents to the tenants personally (via Process Server).

A phone call was placed to the tenants at the phone number on file [REDACTED]. There was no answer.

The tenants have had **41 days** to provide a response.

9. 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

10. The landlords are seeking the following:
 - a) Payment of rent owing **\$950.00**;
 - b) Payment of late fees **\$75.00**;
 - c) Damages **\$430.00**;
 - d) Application of Security Deposit;
 - e) Hearing expenses.

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.

12. 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 - \$950.00

Relevant Submissions

Landlord Position

13. Landlord1 stated that they had entered into a written monthly tenancy with the tenant with rent set at \$950.00 per month, due on the 1st day of each month and a security deposit in the amount of \$475.00 collected on or about 15 August 2018.

14. Landlord1 testified that rent is outstanding in the amount of **\$950.00** up to and including 31 December 2020 as demonstrated in the submitted rent ledger (**Exhibit L # 2**). Landlord1 testified that the tenants had left the property on or about 26 December 2020 without paying December's rent. Landlord1 submitted into evidence a copy of the rental agreement (**Exhibit L # 1**).

Analysis

15. I have reviewed the testimony and evidence of the landlords 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 am satisfied that the tenants did not pay rent as required and abandoned the property on or about 26 December 2020. Rent is required to be paid by the tenants for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began.

17. The tenants abandoned the property in December 2020 for which rent was due on 01 December 2020. I find the tenants responsible for rent up to 31 December 2020 as claimed.

Decision

18. I find the landlords' claim for rent is successful in the amount of **\$950.00**.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

19. The landlords are seeking payment of late fees as a result of the tenants' failure to pay rent on time.
20. Landlord1 testified that the tenants owe rent since April 2019. Landlord1 indicated that they are claiming late fees allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

21. Established by undisputed fact above, the tenants do owe rent for the period ending 31 December 2020 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.
22. As the tenants owed rent from 01 December 2020 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 landlords' claim succeeds in the amount of \$75.00.

Decision

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

Issue 3: Compensation for Damages - \$430.00

Relevant Submissions

Landlord Position

24. Landlord1 testified that on or about 15 May 2019 the property was recovered and damages were noted. Landlord1 testified that the following was noted:
 - a. Cleaning (**\$250.00**)
 - b. Removal of garbage (**\$80.00**)
 - c. Municipal Summary Ticket for Garbage (**\$100.00**)

25. Landlord1 testified that the property was left in a disgusting mess with the appliances left in a state, dog fecal matter left on the floor and mounds of garbage left around the property. He stated that they contracted a commercial cleaner to attend to the mess left around and submitted an invoice from Heaven Scent Cleaning in the amount of \$250.00 (**Exhibit L # 5**) along with the photos taken after the tenants abandoned the unit (**Exhibit L # 4**).
26. Landlord1 further testified that the tenants had left a multitude of garbage on the front step of the property for a period of time. The Municipal enforcement officers cited the property owner (**Exhibit L # 6**) and the citation for breaking the municipal by-laws was \$100.00. The summons was not contested and the homeowner was required to pay **\$100.00** in fines.
27. Landlord1 stated that the citation was issued while the tenants were living in the property and therefore the tenants are responsible for this citation and fine.
28. Landlord1 attended the property on 27 December 2020 to remove the garbage in the property. He stated that the municipality had placed 4 large roll off dumpsters in the Civic Centre and he was fortunate to be able to drop the refuse there at no charge. He added that he is claiming for \$20.00 per trip (4 trips) for the labor and fuel to transport the garbage for a total of **\$80.00**.

Analysis

29. 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”.
30. 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.
31. The tenants have clearly demonstrated that leaving garbage around is a normal thing for them. It is apparent in that the municipal enforcement officers went to the level of issuing a citation for garbage being left around the property. This demonstrates to me that the tenants have very little regard for the landlords’ property.
32. The photos submitted by the landlords also clearly shows disregard for the landlords property by the tenants. There is absolutely no excuse for the dog fecal matter left on the floor and the condition of the appliances. It is nothing short of blatant disregard. I find the tenants responsible for the costs of cleaning in the amount of \$250.00. Further, I find the tenants responsible for the cost of the fine paid by the landlords reflective of the garbage left around the property by the tenants during their stay in the unit.

33. On the matter of the removal of the garbage to the landfill, I find the claim of the landlords at \$80.00 to be more than reasonable and award the landlords the \$80.00 and compensation claimed.

Decision

34. The landlords' claim for damages succeeds in the amount of **\$430.00**.

Issue 4: Hearing Expenses

Landlord Position

35. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 7**). The landlords further paid a fee in the amount of \$100.00 and presented a receipt from ██████████ (Process Server) (**Exhibit L # 8**) for the service of the claim documents. The landlords are seeking these costs.

Analysis

36. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlords 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

37. The tenants shall pay the reasonable expenses of the landlords in the amount of \$120.00.

Issue 6: Application of Security Deposit

Landlord Position

38. Landlord1 testified that a security deposit in the amount of \$475.00 was paid on the property on or about 15 August 2018. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.

Analysis

39. Established by undisputed fact above, the tenants did pay a security deposit to the landlords in the amount of \$475.00. The landlords' claim has been successful. The security deposit plus accrued interest is \$475.00 as the interest rate for 2018 - 2021 is set at 0%.

Decision

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

Summary of Decision

41. The landlords' are entitled to the following:

a)	Damages	\$430.00
b)	Rent.....	950.00
c)	Late Fees.....	75.00
d)	Hearing Expenses	<u>120.00</u>
e)	Subtotal.....	\$1555.00
g)	LESS: Security Deposit	<u>(\$475.00)</u>
h)	Total owing to Landlords	<u>\$1080.00</u>

19 April 2021

Date

Michael Greene
Residential Tenancies Tribunal