

Residential Tenancies Tribunal

[REDACTED] Decision 21-0021-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 02 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. (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. (*Affirmed*).
5. The details of the tenancy are a verbal monthly tenancy commencing 01 April 2018. Rent was set at \$1200.00 per month with utilities extra and a security deposit in the amount of \$500.00 collected on this tenancy on 13 April 2018.
6. 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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

7. The tenant did not appear at the hearing as scheduled. A phone call was placed to the tenant's phone number on file and the tenant was invited to join the hearing to defend the claim. The tenant joined the hearing.

8. The tenant argued she was not served the claim documents. She indicated that the phone number was used between the landlord and tenant but she chose to block the landlords' number. The affidavit supplied by the landlords indicates that the claim documents were served to the tenant via text to [REDACTED] and a copy of the text was provided showing the claim documents attached. It was determined that this was a valid service as per section 42(3)(c) of the *Residential Tenancies Act, 2018*.
9. The landlords did not claim any hearing expenses.

Issues before the Tribunal

10. The landlords are seeking the following:
 - a) Payment of rent owing **\$1800.00**;
 - b) Payment of late fees **\$75.00**
 - c) Hearing expenses.
 - d) Apply Security Deposit

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:
 - i. Section 9(1) of *the Act* and;
 - ii. Section 14(10) of *the Act* and;
 - iii. Policy 6-1: *Abandonment*
 - iv. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owing - \$1800.00

Relevant Submissions

Landlord Position

13. The landlord testified that the tenant was required to pay rent in the amount of \$1200.00 on the first of each month as was agreed in the rental arrangement established when the tenancy began.
14. The landlords stated that the tenant in this matter had always paid her rent on time and they never had any issues with her. The landlords testified that the

tenant paid only \$600.00 in June 2020 and failed to pay for July 2020 in its entirety. The landlords submitted into evidence a rent payment history (**Exhibit L # 1**) to demonstrate the arrears. The landlords testified that the tenant vacated on or about 18 July 2020.

15. The landlords testified that they addressed the complaints of the tenant regarding issues in the lower unit with the adjacent tenant.

Tenant Position

16. The tenant testified that she refused to pay for rent after the middle of June 2020 and vacated on or about 18 July 2020. She stated that on or about 19 May 2020 she messaged the landlords and indicated she would not be paying rent anymore if the troubles she had been experiencing continued.
17. The tenant testified that she advised the landlords of continuing troubles with the tenant in the lower unit concerning noise, men coming and going all hours in the day, and Police constantly at the property.
18. The tenant testified that she felt she did not have to pay rent any longer.

Analysis

19. I have reviewed the testimony and evidence of the landlords and tenant 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 tenant.
20. With respect to the arrears being claimed, I agree with the landlords 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 rental agreement established when the tenancy began.
21. The tenant addressed some issue she was having with a tenant and the alleged lack of response of the landlords. On this matter, the tenant should be aware that there is a formal process within the Residential Tenancies Act, 2018 to address matters where landlords fail to act. This process does not include withholding rent unless otherwise ordered to do so by an adjudicator from the Residential Tenancies Tribunal, or another court of jurisdiction. No such order existed in this matter.
22. Records are clear and the tenant has acknowledged that rent for the period ending 31 July 2020 has not been paid leaving a balance of **\$1800.00**. As such, the tenant is responsible for rent in the amount of \$1800.00.

Decision

23. The landlords' claim for rent succeeds as follows:

- a) Rent owing up to 31 July 2020 \$1800.00
- b) Total due to Landlords..... \$1800.00**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

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

Analysis

- 26. Established by undisputed fact above, the tenant was in arrears since June 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.
- 27. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlords.

Decision

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

Issue 4: Application of Security Deposit

Landlord Position

- 29. The landlords testified that a security deposit in the amount of \$500.00 was paid on the property on or about 13 April 2018. The landlords' claim is seeking to

apply the security deposit against the order issued by the tribunal.

Analysis

30. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$500.00. The landlords' 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

31. As the landlords' claim above has been successful, the landlords shall apply the security deposit being held against the attached Order as outlined in the attached.

Summary of Decision

32. The landlords are entitled to the following:

a)	Rent Owing	\$1800.00
b)	Late Fees.....	75.00
c)	Subtotal	\$1875.00
d)	LESS: Security Deposit.....	<u>(\$500.00)</u>
e)	Total Owing to the Landlords	<u>\$1375.00</u>

09 March 2021

Date

Michael Greene
Residential Tenancies Tribunal