

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0002-03

Application [REDACTED]

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 21 January 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The landlord, [REDACTED], hereafter referred to as landlord, participated in the hearing.
3. The tenants, [REDACTED], hereafter referred to as tenant 1 and the tenant, [REDACTED], hereafter referred to as tenant 2, participated in the hearing.
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$1050.00 per month and due on the 1st of each month began on June 1, 2018 and terminated on January 11, 2019. It was stated that a security deposit in the amount of \$500.00 was collected on or about June 1, 2018 and the landlord issued a termination notice dated January 2, 2019 for the intended termination date of January 8, 2019 under Section 24 of the *Residential Tenancies Act, 2018*.
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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. Application [REDACTED] was AMENDED at the hearing to remove the request for vacant possession as the tenants vacated the rented premises on January 11, 2019.
7. Application [REDACTED] was AMENDED at the hearing to dismiss file [REDACTED] [REDACTED], as the determination of the validity of notice is no longer required when the tenants vacated the property.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$1050.00**;
 - b) Payment of late fees
 - c) 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 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 - \$1050.00

Relevant Submissions

Landlord Position

11. The landlord stated that he had entered into a verbal rental agreement with the tenants, commencing June 1, 2018. The agreed rent was set at \$1050.00 per month and due on the 1st day of each month with a security deposit in the amount of \$500.00 collected on this tenancy. The landlord issued a termination notice (Exhibit L # 1) for the intended date of January 8, 2019. The landlord stated that the tenants vacated on January 11, 2018. The landlord stated that no rent was received from the tenants for January 2019 with the balance outstanding being \$1050.00 up to and including 31 January 2019. The landlord stated as of the hearing date 21 January 2019 rent remains outstanding.

Tenant Position

12. The tenants stated that they owe the rent for the month of January and have no problems paying for anything that is owed. The tenant stated that they had issues with noise at the property during the day from kids upstairs and as they work evenings, they were unable to stay at the property and moved on the landlord's notice.

Analysis

13. I have reviewed the testimony and evidence of the landlord and tenants in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenants.
14. With respect to the arrears being claimed, I agree with the landlord and the acknowledgement of the tenants 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 rental agreement established when the tenancy began. Records are clear that rent for January 2019 came due on January 1, 2019 and for the purpose of this decision can only be calculated up to and including the day the tenants vacated the property (11 January 2019) as a result of the termination notice issued by the landlord. That calculation is $(\$1050.00 \times 12 \text{ months} = \$12,600.00 \div 365 \text{ days} = \$34.52 \text{ per day} \times 11 \text{ days} = \$379.72)$. Rent for January 2019 then is **\$379.72**.

Decision

15. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing for January 1 – 11, 2019 **\$379.72**
 - b) Total Arrears **\$379.72**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

16. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
17. The landlord testified that the tenants have been in arrears since January 2019. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018* and the tenants have been in arrears since January 1, 2019.

The Tenant Position

18. The tenants stated that they are fine with this portion of the claim and understood the origin of the claim.

Analysis

19. Established by undisputed fact in paragraph 14, the tenants were in arrears for the month of January 2019. 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.
20. The calculated amount is as follows:

a. January 2, 2019 (1 st day Late @ \$5.00):	\$5.00
b. January 3 – 21, 2019 (19 days @ \$2.00):	<u>38.00</u>
c. Total Late Fees Owing	<u>\$43.00</u>
21. The issue of rental arrears has been determined in paragraph 14 above confirming that the tenants owe rent to the landlord.

Decision

22. The landlord's claim for late fees succeeds in the amount of \$43.00 as calculated up to and including the hearing date (January 21, 2019).

Issue 3: Hearing Expenses

Landlord Position

23. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 2**). The landlord is seeking this cost.

Tenant Position

24. The tenants were fine with this request and understood the basis of the request.

Analysis

25. I have reviewed the testimony and evidence of the landlord and tenants 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 tenants are responsible to cover these reasonable expenses.

Decision

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

Issue 4: Application of Security Deposit

Landlord Position

27. The landlord's original application did not seek the disposition of the security deposit but as the tenancy terminated after the filing of the application, the disposition of the security deposit being held by the landlord will be adjudicated on at the hearing.
28. The landlord testified that a security deposit in the amount of \$500.00 was paid on the property on or about June 1, 2018. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

The Tenant Position

29. The tenants stated that they are fine with this portion of the claim and understood the origin of the claim.

Analysis

30. Established by undisputed fact in paragraph 4 & 28 above, the tenants did pay a security deposit to the landlord in the amount of \$500.00. The landlord's claim has been successful and the tenants do owe the landlord for rent, late fees and hearing expenses. The interest rate set out by the Minister on security deposits for 2018 and 2019 is set at 0%. The security deposit plus accrued interest then is \$500.00.

Decision

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

Summary of Decision

32. The landlord is entitled to the following:

a)	Rent Owing	\$379.72
b)	Late Fees.....	43.00
b)	Hearing Expenses	<u>\$20.00</u>
c)	Sub-total	\$442.72
d)	Less: Security Deposit	<u>(\$500.00)</u>
e)	Total owing to Tenants.....	\$57.28

February 4, 2019

Date

Michael Greene
Residential Tenancies Tribunal