

Residential Tenancies Tribunal

[REDACTED] Decision 19-034-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 07 February 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The tenants, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not participate

Issues before the Tribunal

3. The landlords are seeking the following:
 - a. A payment of rent in the amount of \$2750.00;
 - b. A payment of late fees in the amount of \$75.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a)

respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served.

7. The landlords submitted an affidavit with their application showing that the tenants were served, via text-message, with notice of the hearing on 21 January 2019. They also submitted copies of those text-messages at the hearing as well as a copy of a text-message exchange with the tenants which shows that they had previously communicated at that same cellular number.
8. As the tenants were properly served and as they have had 16 days to provide a response, I proceeded with the hearing in their absence.

Issue 1: Rent - \$2750.00

Relevant Submissions

The Landlords' Position

9. The landlords entered into a 1-year, fixed-term rental agreement with the tenants on 01 April 2017 and a copy of the executed lease was submitted at the hearing (JA #1). The agreed rent was set at \$1050.00 and it is acknowledged in the lease that the tenants had paid a security deposit of \$550.00.
10. With their application, the landlords submitted a copy of their rent records (JA #2) and at the hearing a copy of the e-mail receipts for the INTERAC e-Transfers sent to landlord1 were also submitted into evidence (JA #3). According to these records, the tenants fell behind in their rental payments in the summer of 2018 and were roughly a whole month behind in their payments through to November 2018.
11. On 07 January 2019 the landlords issued the tenants a termination notice for nonpayment of rent and they vacated on 18 January 2019.
12. The landlords are seeking an order for a payment of rent in the amount of \$2750.00: \$650.00 remaining for November 2018 and the full rent of \$1050.00 for each of December 2018 and January 2019.

Analysis and Decision

13. I accept the testimony and evidence of the landlords in this matter and I find that the tenants had not paid rent as required. According to the records and the e-Transfer receipts submitted at the hearing, I find that the tenants owe the landlords \$2750.00.

Issue 2: Late fees - \$75.00

Relevant Submissions

The Landlords' Position

14. The landlords have assessed late fees in the amount of \$75.00.

Analysis

15. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

16. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

Decision

17. As the tenants have been in arrears since 02 November 2018, the landlords are entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Hearing Expenses

16. The landlords paid a filing fee of \$20.00 to file this application. As the landlords' claim has been successful, the tenants shall pay this hearing expense.

Issue 4: Security Deposit

17. According to their application, the tenants paid a security deposit of \$550.00 on 23 March 2017 and receipt of that deposit is acknowledged in the submitted lease. As the landlords' claim has been successful, they shall retain the security deposit as outlined in this decision and order.

Summary of Decision

18. The landlords are entitled to the following:

- a) Rent Owing \$2750.00
- b) Late Fees \$75.00
- c) Hearing Expenses \$20.00
- d) LESS: Security Deposit (\$550.00)
- e) Total Owing to Landlord \$2295.00

04 March 2019

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal