

Residential Tenancies Tribunal

Decision 19-0011-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:45 am on 14 January 2020 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The originating applicant, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing.
3. The countering applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing (*affirmed*).
4. The details of the claim were presented as a written fixed term rental agreement with rent set at \$600.00 per month and due on the 1st of each month. It was stated that no security deposit was collected on the tenancy. The landlord stated that the rental unit was abandoned by the tenant.
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. 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 **03 October 2019** by serving the application for dispute resolution document to the tenant via registered mail ([REDACTED] [REDACTED]).

There was no answer at the number on file for the tenant [REDACTED] when contacted.

As the tenant was properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

7. The landlord amended the claim at the hearing to:
 - a. Change the spelling of his first name to read [REDACTED].
 - b. Remove the request for compensation for inconvenience of 4130.00 as it was for travel expenses which are not an allowable claim against a tenant.
8. The tenant failed to appear at the scheduled hearing and as such the tenant's claim, [REDACTED] was dismissed.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Payment of rent owing **\$600.00**
 - b) Payment of Utilities **\$100.00**
 - c) 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 - \$600.00

Relevant Submissions

Landlord Position

12. The landlord stated that both parties had entered into a written fixed term rental agreement commencing 01 June 2018 and set to expire on 31 May 2019. The agreed rent was set at \$600.00 per month and due on the 1st day of each month with no security deposit collected on the tenancy. The landlord testified that the tenant abandoned the property on or about 25 March 2018 and the property was re-rented for 01 June 2019.
13. The landlord testified that rent was received for April 2019 but no rent was received for May 2019, the final month of tenancy. The landlord submitted into evidence a ledger (**Exhibit L # 2**).
14. The landlord testified he did not receive any notice from the tenant that he was vacating the property and when recovered, repairs were required which made the property not rentable for April 2019. The landlord is claiming rent for May 2019 as it was not rented during this period for which the tenant was responsible under contract.

Analysis

15. I have reviewed the testimony and evidence of the landlord 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 tenant.
16. With respect to the arrears being claimed, I agree with the landlord that rent is owed. The determination of the amount of rent owed can only rest with the records submitted. 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. Rent cannot be withheld without the direction through an order of the Residential Tenancies Division. Based on the evidence provided I find that rent for the period ending 31 May 2019 is outstanding in the amount of **\$600.00**.

Decision

17. The landlord's claim for rent succeeds as follows:
 - a) Rent owing up to 31 May 2019..... \$600.00

Issue 2: Payment of Utilities- \$100.00

Landlord Position

18. The landlord is seeking payment of utilities.
19. The landlord testified that rent is inclusive of utilities as the utilities is shared with another tenant in the building. The landlord claims that the tenant kept the windows open during the cold months of the year and the heat on. The landlord is claiming an estimated amount of \$100.00 for the extra utilities used as a result of the tenant's behavior. The landlord did not submit any invoices for the extra utilities.

Analysis

20. The tenant's rent as stated by the landlord was inclusive of utilities. It is the right of the tenant to control the heat at a reasonable level. The landlord has not submitted any evidence to quantify any excess amounts of utilities used. Further, the tenant has paid the utilities portion for April 2019 with the rental payment and the landlord has been awarded costs for rent and attached utilities in the rent award above.
21. There is no substantive proof that additional utilities used are the responsibility of the tenant and that utilities are inclusive in the rental payments, no further award for utilities are awarded. The landlord's claim for utilities fails.

Decision

22. The landlord's claim for utilities fails.

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 (████████) (Exhibit L # 4), and a receipt from Canada Post for the service of documents by registered mail (██████████) in the amount of \$13.11. The landlord is seeking these expenses.

Analysis

24. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord is 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

25. The tenant shall pay the reasonable expenses of the landlord in the amount of \$33.11.

Summary of Decision

26. The landlord is entitled to the following:

a)	Rent Owing (up to and including 31 May 2019)	\$600.00
b)	Hearing Expenses	<u>\$33.11</u>
c)	Total owing to Landlord	\$633.11

27 March 2020

Date

Michael Greene
Residential Tenancies Tribunal