

Residential Tenancies Tribunal

Decision 19-0019-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:00 am on 15 October 2019 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 landlord, [REDACTED], hereafter referred to as landlord1, participated in the hearing (*Affirmed*).
3. The landlord, [REDACTED], hereafter referred to as landlord2, participated in the hearing (*Affirmed*).
4. The tenant, [REDACTED], hereafter referred to as the tenant, did not participate in the hearing. (*Tenant failed to show at the previous hearing on 12 August 2019*)
5. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$575.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$450.00 was collected on this tenancy on or about 31 May 2019. The landlords testified that an abandonment notice dated 03 June 2019 was placed on the rented premises and recovered on 04 June 2019.
6. 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

7. 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 landlords show that the tenant was served with the notice of the original hearing (12 August 2019) on the **21 June 2019** by serving the documents to the tenant electronically to the phone number [REDACTED] which is the number used to communicate with the tenant. The landlords provided text communications between the tenant and landlords.

- 1) A copy of text correspondence between the landlords and tenant before and after the unit was recovered establishing the phone number address as a valid communication avenue.

The tenant had **51 days** to provide a response.

The tenant failed to appear at the originally scheduled hearing on 12 August 2019 and as such is no longer entitled to further service of hearing date as per Department Policy.

As a courtesy, a phone call was placed to the tenant's contact number supplied [REDACTED] and [REDACTED] and no answer was obtained at either number.

8. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlords applicant, I proceeded in the tenant's absence.

Issues before the Tribunal

9. The landlords are seeking the following:
 - a) Payment of rent owing **\$450.00**;
 - b) 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:
 - a. Sections 34 and 35 of *the Act*; and;
 - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owing - \$450.00

Relevant Submissions

Landlord Position

12. The landlords stated that they had entered into a written monthly rental agreement with the tenant, commencing 01 June 2019. The agreed rent was set at \$575.00 per month and due on the 1st day of each month. There was a security deposit collected on this tenancy in the amount of \$450.00 on or about 31 May 2019. The landlords issued an abandonment notice on 03 June 2019 and recovered on 04 June 2019. The landlords stated that the tenant failed to complete the terms and conditions of moving into the rental unit (transfer of power into the tenant's name etc). The landlords testified that the property was immediately advertised for rent and they were successful in securing a new tenant for 01 July 2019. The landlords testified that they are seeking rent for the month of June 2019 when the tenant failed to take possession of the property. The landlord submitted into evidence text message conversations between the tenant and both landlords (**Exhibits L # 2 and 3**) along with two e-transfers from the tenant for the security deposit (**Exhibit L # 1**). They stated that rent was set at \$575.00 but they are only seeking an amount up to and including the value of the security deposit (\$450.00).

Analysis

13. I have reviewed the testimony and evidence of the landlords 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 landlords actually owed by the tenant.
14. With respect to the amount being claimed as rent in lieu of notice, I agree with the landlords that rent is owed. The tenant did not hold up her end of the rental contract by changing the power account into her name in advance of entry, paying the rent for the first of the month before entry and moving into the unit. The landlords have a legal right to post an abandonment notice when they feel a

rental unit has been abandoned. The tenant's inaction to finalize the rental conditions and lack of moving or concerted attempts to move into the property on the 1st of June 2019 could leave a landlord with a sense that the property was abandoned. 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. Records are clear that rent was not paid and no termination notice was provided by the tenant.

15. I find that based on the evidence provided, it was reasonable for the landlords to assert that the tenant likely abandoned the rental agreement and failed to provide any notice or pay the required rent. The landlords took the necessary and reasonable steps to recover the unit and immediately try to secure new tenants and were successful for 01 July 2019. I find that the tenant owes rent in the amount of \$575.00 covering the period up to 30 June 2019. The landlords have stated that they are seeking only the amount of the security deposit (\$450.00) yet their claim was filed for the full amount of a month's rent (\$575.00).

Decision

16. The landlords' total claim for rent succeeds as follows:

- a) Rent owing up to June 1 – 30, 2019..... \$450.00
- b) Total Arrears **\$450.00**

Issue 2: Hearing Expenses

Landlord Position

17. 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 # 4**). The landlords are seeking this cost.

Analysis

18. 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 tenant is responsible to cover these reasonable expenses.

Decision

19. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

Issue 4: Refund of Security Deposit

Landlord Position

20. The landlords testified that a security deposit in the amount of \$450.00 was collected on the tenancy on or about 31 May 2019. The landlords are seeking that this deposit be applied against any order derived from this application and claim.

Analysis

21. I have reviewed the testimony and evidence of the landlords in this matter. Evidence is clear that a security deposit in the amount of \$450.00 was paid by the tenant. It is reasonable for the landlords to offset the security deposit against an amount owing by the tenant. The accrued interest and security deposit is \$450.00 as the interest rate is set at 0% for 2019 and 2020.

Decision

22. The landlords' claim to offset the security deposit against an amount owing is successful.

Summary of Decision

23. The landlords are entitled to the following:

a)	Rent Owing	\$450.00
b)	Hearing Expenses	<u>\$20.00</u>
c)	Sub-total	\$470.00
d)	LESS: Security Deposit.....	<u>(\$450.00)</u>
c)	Total owing to Landlords	<u>\$20.00</u>

17 February 2020

Date

Michael Greene
Residential Tenancies Tribunal