

Residential Tenancies Tribunal

Decision 19-0066-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:00 am on 23 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 the landlord, participated in the hearing and was represented by [REDACTED] - (Affirmed).
3. The tenant, [REDACTED], hereafter referred to as tenant, did not participate in the hearing.
4. The details of the claim were presented as a written fixed term rental agreement with rent set at \$625.00 per month and due on the 1st of each month. It was stated that no security deposit was collected on this tenancy. The landlord testified they issued a termination notice on or about 19 August 2019 for a termination date of 30 August 2019 under section 19 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. 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 the original hearing on the **08 September 2019** by serving the documents to the tenant personally at [REDACTED]
[REDACTED].

The tenant had **44 days** to provide a response.

7. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.
8. The landlord amended the application at the onset of the hearing to remove the request for vacant possession as the tenant vacated on or about 20 October 2019.
9. The landlord further amended the application to add rent for the months of September and October 2019 in the amount of \$1250.00. The new amount of rent being claimed is \$1875.00.

Issues before the Tribunal

10. The landlord is seeking the following:
 - a) Payment of rent owing **\$1875.00**;
 - b) Late Fees - **\$75.00**
 - c) Hearing expenses.

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:
 - 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 - \$1875.00

Relevant Submissions

Landlord Position

13. The landlord stated that he had entered into a written fixed term rental agreement with the tenant, commencing September 2018 and set to expire 30 June 2020. The agreed rent was set at \$625.00 per month and due on the 1st day of each month. There was no security deposit collected on this tenancy. The landlord issued a termination notice on 19 August 2019 to terminate on 30 August 2019. The landlord stated that the tenant vacated on 20 October 2019. The landlord testified that he is seeking rent for the months of 1 August 2019 – 31 October 2019 as the tenant failed to make the rental payments. The landlord submitted into evidence a rental ledger (**Exhibits L # 1**) along with a copy of the termination notice (**Exhibit L # 2**). The landlord stated that rent is outstanding in the amount of \$1875.00.

Analysis

14. 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.
15. With respect to the amount being claimed, I agree with the landlord 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. Records are clear that rent was not paid for the period of 01 August 2019 to 31 October 2019.
16. Evidence is also clear that the landlord terminated the tenancy with a notice issued 19 August 2019.

17. I find that based on the evidence provided, the tenant owes rent in the amount of \$1250.00 covering the period 01 August 2019 to 30 September 2019. I further find that the tenant owes rent for the month of October in the amount of **\$411.00** up to the date the tenant vacated (20 October 2019) and is calculated as (\$625.00 X 12 months = \$7500.00 ÷ 365 days = \$20.55 per day X 20 days = \$411.00).

Decision

18. The landlord's total claim for rent succeeds as follows:

- a) Rent owing up to 30 September 2019..... \$1250.00
- b) Rent for the period October 1 – 20, 2019..... 411.00
- c) Total Arrears **\$1661.00**

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

19. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.

20. The landlord testified that the tenant has been in arrears since the beginning of the tenancy 01 August 2019. The landlord indicated that they are seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

21. Established by the undisputed fact above, the tenant was in arrears for the period 01 August 2019 to 20 October 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.

22. Given that the tenant has been in arrears since 01 August 2019, any calculated amount of late fees will exceed the maximum allowable per late period of \$75.00.

23. The issue of rental arrears has been determined above confirming that the tenant owes rent to the landlord.

Decision

24. The landlord's claim for late fees succeeds in the amount of \$75.00 as per the regulations established under the *Residential Tenancies Act, 2018*.

Issue 3: Hearing Expenses

Landlord Position

25. 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 # 4**). The landlord is seeking these costs.

Analysis

26. I have reviewed the testimony and evidence of the landlord 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 tenant is responsible to cover these reasonable expenses.

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

Summary of Decision

28. The landlord is entitled to the following:

a)	Rent Owing (up to and including 20 October 2019)	\$1661.00
b)	Late Fees.....	75.00
c)	Hearing Expenses	<u>\$20.00</u>
d)	Total owing to Landlord	<u>\$1756.00</u>

17 February 2020

Date

Michael Greene
Residential Tenancies Tribunal