

Residential Tenancies Tribunal

[REDACTED] Decision 19-0083-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:00 am on 25 September 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as landlord1, participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing. (*Sworn*)
4. The respondent, [REDACTED], hereafter referred to as tenant1 participated in the hearing. (*Affirmed*)
5. The respondent, [REDACTED], hereafter referred to as tenant2 participated in the hearing. (*Affirmed*)
6. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$800.00 per month inclusive of utilities and due on the 1st of each month. It was stated that a security deposit was collected on this tenancy in the amount of \$500.00 on 19 February 2019 and this security deposit was ordered returned by this Division by *Order of Director* [REDACTED].
7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicants have 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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

8. Landlord2 amended the application at the onset of the hearing to address the legal spelling of her first name as [REDACTED].
9. The affidavit submitted by the landlords show that tenant1 and tenant2 were served with the notice of this hearing on the **04 September 2019** by serving the application for dispute resolution document by registered mail [REDACTED] and Canada Post tracking has verified that the documents were signed for 04 September 2019.

Issues before the Tribunal

10. The landlords are seeking the following:
 - a) Payment of rent owing **\$500.00**
 - b) 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 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 - \$500.00

Relevant Submissions

Landlord Position

13. Landlord1 stated that they entered into a verbal monthly rental agreement with the tenants, commencing 01 April 2019 for the property at [REDACTED]. The agreed rent was set at \$800.00 per month with utilities included and due on the 1st day of each month. A security deposit was collected on this tenancy in the amount of \$500.00 and has been ordered returned under **Order of Director** [REDACTED]. Landlord1 testified that they held the unit for the tenants for the month of March 2019 and did not receive any rent. The landlords submitted into evidence rental records (**Exhibit L # 1**). The rental records consists of two receipts (# 31 and 33).

14. Landlord1 further testified they should be entitled to rent for the month of March as they held the unit for the tenants for this month and referred to a series of text messages (**Exhibit L # 2**) to demonstrate that there was an agreement to hold the unit. The landlord indicated that given the agreement to hold, they should be entitled to the rent for March in the amount of \$500.00.

Tenant Position

15. The tenants in this matter dispute the landlords claim stating that there was never an agreement to hold the unit and that there was only an agreement to pay a security deposit in the amount of \$500.00. The tenants state that they feel they don't owe anything as they paid exactly what was asked of them.

Analysis

16. I have reviewed the testimony and evidence of the landlords and tenants in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) was there an agreement in place between the parties to hold the rental unit in favor of rent being paid.
17. The establishment of an agreement to hold the unit in favor of rent is paramount to this claim. The key evidence is the text conversation that the landlord submitted into evidence as exhibit **L # 2**. After analyzing this series of texts between the parties, I have noted on page 1 there was a reference to "**maybe holding the unit or keeping us updated on future availability**". This portion of the communication does not establish an agreement between the parties in any sort of way to hold the unit for them. Further, on page 2 of the same document, I have noted that the agreement was established toward the bottom of the page when the parties agreed to set rent at \$800.00 and move in in April. The response is "**its yours if you want it ☺**". This section establishes a rental agreement but not any sort of agreement to hold the unit for the month of March as indicated by the landlord. Lastly, I note on page 3 of the same document that there is a notation from the landlord to **drop by and make a \$500.00 deposit and be provided with a receipt**.
18. The above to me clearly establishes the makings of a rental agreement where rent is to be \$800.00 per month and a security deposit of \$500.00 is to be paid. There is no notion that the tenants were to pay any sort of holding fee or rent for the month of March. As such, I find that there was no requirement for the tenants to make any payments of rent for the month of March 2019. Therefore, the landlords claim for the payment of rent in the amount of \$500.00 fails.

Decision

19. The landlords' claim for rent fails

Issue 2: Hearing Expenses

Landlord Position

20. The landlords 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 landlords also paid a fee to Canada Post in the amount of \$14.51 for the service of Documents (**Exhibit L # 3**). The landlords are seeking this cost.

Analysis

21. I have reviewed the testimony and evidence of the landlords and tenants in this matter. The expenses incurred by the landlords are considered unnecessary as the landlords' claim has not been successful. As such, I find the tenants are not responsible to cover the expenses incurred by the landlords.

Decision

22. The landlords' claim for hearing expenses fails.

Summary of Decision

23. The landlords' claim fails.

26 November 2019

Date

Michael Greene
Residential Tenancies Tribunal

