

Residential Tenancies Tribunal

Application 2024-0996-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 14-November-2024 at 1:49 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, also attended via teleconference.

Preliminary Matters

4. The tenants acknowledged that they received notice of this hearing more than ten days in advance of the hearing date.
5. The landlord requested at the time of the hearing to amend her application to include an amount she says is still outstanding from a previous order issued in her favor against the tenants by this tribunal (2024-0709-NL & 2024-0834-NL). To issue multiple orders for one sum of money would be an error of law and potentially cause confusion in enforcement, so this request is denied.
6. The tenants testified that they had evidence they wished to submit but had been unable to do so. They said they had attempted to call about the matter the day before the hearing, 13-November-2024, but received no answer, and their ability to contact with our office had been limited by a motor vehicle accident. While this is unfortunate, the tenants had been served notice of this hearing 19-October-2024 and had plenty of time to attempt to submit evidence or look for a postponement prior to the hearing date. This tribunal asks parties to submit evidence to the tribunal and to the other party at least three days in advance, wherever possible.
7. In addition, this evidence was represented to be statements by the landlord stating that if the tenants moved out immediately, she would waive their rent. The tenants characterized this as a bribe, though I suggested it sounded more like an offer to settle. Such a statement would constitute either an offer which was rejected or, perhaps, a promise without consideration (i.e., some kind of payment or something of value) and

not under seal and would not therefore be legally binding. I therefore do not see this potential evidence as relevant.

8. Accordingly, I refuse to allow the late admission of this evidence.
9. The landlord also suggested there was a piece of evidence she could submit after the hearing, a utility bill for the month of October. She says it was unavailable at the time she submitted her application. I accept that it is relevant. Nevertheless, it could have been submitted in advance of the hearing and was not. I therefore refuse to accept it into evidence.

Issues before the Tribunal

10. Should the landlords' claim for unpaid rent, utilities, and late fees succeed?
11. What is the proper disposition of the security deposit?

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018 (the *Act*).

Issue 1: Unpaid Rent, Utilities, and Late Fees

Landlord's Position

13. The landlords claim for \$2000.00 in unpaid rent, unpaid utilities in the amount of \$263.30, and late fees in the amount of \$110.00. A rent ledger was provided in support of this (LL#1 page 4). The rent total consists of the full monthly rent of \$1000/month for the months of September and October 2024. Parties agreed that the tenants vacated the premises on 31-October-2024. The landlord testified that the tenants were responsible for 2/3rds of the utility bill during the tenancy. She testified that the \$263.30 total consists of \$108.77 for September and \$154.53 for the month of October, these being 2/3rds of the utility bills of \$164.81 (LL#1 page 9 shows the bill from Newfoundland Power) and \$234.15 respectively. The latter bill was not submitted as discussed in paragraph 9 above. I note that the landlord appears to have calculated these totals by multiplying the monthly bill by 0.66 rather than multiplying by (2/3) resulting in slightly lower totals than would be expected.

Tenants' Position

14. The tenants suggested that the utility bill for September had already been ruled on during a previous decision by this tribunal (2024-0709-NL & 2024-0834-NL). The tenants questioned the date of when the landlord received the utility bills. One of the tenants suggested she was being untruthful about this and had been charging them the bills at a delay, impliedly for some malicious or deceitful reason, and should have been able to know what she had been charged for the month of October at the time she filed her claim. He implied that Newfoundland Power surely would have made the total known to her shortly after the meter was read but admitted he had never dealt with Newfoundland

Power directly. The tenants also asserted that they were entitled to withhold rent because the landlord, they allege, illegally cut services that were included their rent, including internet and cable. The tenants say they had no notice they were being charged late fees until they were served notice of this hearing.

Analysis

15. I reviewed the exhibits from the previous hearing referenced by the tenants and found that the utility bill from September was not included.
16. When the landlord received the utility bill from Newfoundland Power is not relevant to the issues.
17. In the absence of an application before this tribunal asking for a refund of rent on the grounds that the landlord suspended services illegally, I decline to consider the issue. The landlord is entitled to notice to prepare a response to such allegations. Further, this would not give the tenants ground to withhold rent (though it may entitle them to a reduction of rent under s. 16(5) of the *Act*).
18. S. 15(1) states that 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. According to the Residential Tenancies Program Policy and Procedure Guide Policy 2-004, when rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00. There is no requirement that the tenants be advised of the landlord's intention to seek a late payment fee in advance of the notice of hearing.
19. In the absence of a bill from Newfoundland Power or other documentary evidence of the cost of the October power bill, I decline to award this portion of the landlord's claim.
20. Considering the evidence in its totality on a balance of probabilities, I find that the landlord's claim succeeds in the amounts of \$2000.00 in unpaid rent, \$108.77 in unpaid utilities, and \$75.00 in late fees.

Decision

21. The tenants shall pay to the landlord \$2000.00 in unpaid rent.
22. The tenants shall pay to the landlord \$108.77 in unpaid utilities.
23. The tenants shall pay to the landlord \$75.00 in late fees.
24. The landlord was successful in their application and are therefore entitled to have their reasonable hearing expenses covered. In this case, their hearing expenses consisted solely of the \$20.00 application fee.

25. The tenancy has ended and the security deposit must be disposed of. In this case, the security deposit was \$500.00 which was paid on or about the beginning of February 2024.
26. According to s. 14(7) of the *Act*, a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. The regulations prescribe a 1% cumulative simple interest rate for 2024. Calculated to the date of the hearing, this yields a total amount of interest of \$3.93.

Summary of Decision

27. The tenants shall pay to the landlord \$1699.84 as follows:

Unpaid rent.....	\$2000.00
Unpaid Utilities.....	\$108.77
Late fees.....	\$75.00
Hearing Expenses.....	\$20.00
Less Security Deposit.....	-\$503.93
Total.....	\$1699.84

January 7, 2025
Date


Seren Cahill
Residential Tenancies Office