

Residential Tenancies Tribunal

Application [REDACTED]
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Decision 21-0009-04

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:45 a.m. on 15 October, 2021.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant" attended the conference at 10:00 a.m.
3. The respondent and counter applicant, [REDACTED] owner of [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.

Preliminary Matters

4. The tenant was not present or represented at the start of the hearing and I was unable to reach her by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date 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 she has been properly served. The landlord submitted an affidavit (#01) with his application stating that he had a courier serve the tenant with notice of the hearing, personally to the tenant, on August 26, 2021. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
5. The tenant had filed a claim [REDACTED] for Validity of Termination Notice and other, as she was not present at the start of the hearing, this claim was dismissed. At 10:00 a.m. the tenant entered the hearing, her file was already dismissed and this was explained to her, her issues were directly tied to the landlord's application [REDACTED], so she was able to provide her testimony and her issues were heard through his application.
6. The landlord was seeking Vacant Possession, he believes that the tenant moved around 23-September-2021, this issue is resolved.

Issues before the Tribunal

7. The Landlord is seeking:
 - Rent paid \$4,500.00
 - Utilities paid \$1,404.31
 - Late fees \$75.00
 - Hearing expenses reimbursed \$20.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this case are sections 15; Failure to Pay Rent and 19, Notice Where Failure to Pay Rent of the *Residential Tenancies Act, 2018* and Rule 29 of the Rules of the Supreme Court, 1986.

Issue 1: Rent paid \$4,500.00

Landlord Position

10. The landlord said that he entered into a verbal rental agreement with the tenant beginning November 01, 2020, the tenant took occupancy a few days before. The rent was set at \$1,000.00 a month, pay own utilities. There was no security deposit paid.
11. The landlord had served an eviction notice for failure to pay rent with a termination date of August 22, 2021. He believes the tenant moved out around 23-September-2021 and he regained possession on 28-September-2021.
12. The landlord submitted the Rent Ledger (■#02) showing a balance of \$4,500.00 owing. The rent ledger did not include September rent, the landlord did not wish to update for the additional amount of rent.
13. The landlord agreed that the tenant did work on the apartment and he gave her the first month's rent for the work she had completed. The ledger (■#02) shows that the tenant was credited with the first months' rent and paid \$4,500.00 in total for the rent from November to the end of August, which leaves a balance of \$4,500.00.
14. The landlord did not give written permission for the tenant to complete additional work on the apartment. He also did not agree to rent payments for work on the apartment after the initial clean-up; which they negotiated in November and is reflected on the Rent Ledger (■#02).

Tenant Position

15. The tenant said that the apartment was left in terrible condition from the last tenant. She said that she had an agreement with the landlord that if she cleaned the apartment and fixed the place up she could work for her first months' rent.

16. The tenant said that she was fixing up the place after the initial clean-up and put a lot of work into the apartment and she thought that this would cover the rent.
17. She did not have a written agreement saying she could do the additional work and repairs for rent.

Analysis

18. The burden of proof for rent payment is on the tenant. The tenant did not provide any evidence that she had paid rent. She did not submit receipts. She also had not provided any evidence that she had signed a contract with the landlord to say what work she was completing in the apartment and the value of that work.
19. The Landlord's rent ledger (█#02) shows that the tenant is in arrears for her rent.
20. I find that the tenant does owe the landlord rent. The landlord's claim for rent owing succeeds in the amount of \$4,500.00.

Decision

21. The tenant shall pay the landlord \$4,500.00 for rent owing.

Issue 2: Utilities paid \$1,404.31

Landlord Position

22. The landlord submitted a Utilities ledger (█#03) indicating that the tenant owes \$1,404.31, for the NL Hydro bill.
23. The landlord said that utilities were not a part of the rent (paragraph 10) and that the expectation was that the tenant would switch the utilities into her name when she took occupancy.
24. The landlord submitted the NL Hydro bills (█#05) showing that no payments were made and the total owing is the same amount as on his ledger (█#03) \$1,404.31.
25. The landlord stated that he had a number of phone calls with NL Hydro. The previous tenant had moved and this tenant had not put the bill in her name. As he was the owner of the property the bills started coming to him. When he was first contacted, he then contacted the tenant and reminded her that she is to put her name on this bill.
26. The landlord said he asked her to change her name a number of times, however she never changed the billing into her name and this resulted in the power being cut off.
27. The landlord said someone, who was probably the boyfriend of the tenant, approached him about paying this bill. The boyfriend did not give the landlord any money and the landlord had said to this person that there is a lot more than utilities owing.

Tenant Position

28. The tenant acknowledges that she did not put the utilities in her name.
29. The tenant knows the former tenant and he would tell her when the bill came in to him. She said she was paying this individual cash for the utilities owing.
30. After she knew that the former tenant was not paying the utilities out of her money, her boyfriend tried to work out this payment with the landlord.
31. The landlord would not take this money from the boyfriend.

Analysis

32. The tenant's actions of paying the former tenant for utilities owed, as well as, her boyfriend trying to pay the amount owed to the landlord for utilities, indicates that she was under the understanding, that utilities were her responsibility.
33. NL Hydro sent bill payments to the landlord when the tenant did not change the billing into her name. This bill is now the burden of the landlord.
34. The tenant paid another person for the cost of the utilities, that person never paid that bill on her behalf. This injustice is not under the authority of this board.
35. The tenant is responsible for the payment of this money to the landlord.

Decision

36. The tenant shall pay the landlord \$1,404.31 for the cost of utilities.

Issue 3: Late Fees \$75.00

Landlord Position

37. The landlord submitted the rent ledger (████#02) showing the tenant was in rental arrears on January 02, 2021 and remained in arrears to date.

Tenant Position

38. The tenant stated that she had done a lot of work on the apartment and thought that this would cover rent owed.

Analysis

39. There is no written agreement indicating that the tenant would be compensated for rent by doing repairs on the apartment.

40. The rent ledger indicates that the tenant had been in rental arrears since January 02, 2021.
41. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) 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.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) *\$5.00 for the first day the rent is in arrears, and*
- (b) *\$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

42. As the tenant has been arrears since January 02, 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

43. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 4: Hearing Expenses \$20.00

44. The landlord incurred the cost of \$20.00 to file this application and provided the receipt for same ([REDACTED] #04).
45. As the claim is successful the tenant shall pay the total of these expenses from the damage deposit.

Summary of Decision

46. The landlord is entitled to the following:

| | |
|-------------------------|--------------------------|
| • Rent | \$4,500.00 |
| • Utilities..... | 1.404.34 |
| • Late fees..... | 75.00 |
| • Hearing expenses..... | <u>20.00</u> |
| Total | <u>\$5,999.35</u> |

47. The tenant shall pay the landlord \$5,999.35 for monies owing.

October 25, 2021

Date

