

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0011-02

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 01 October 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1306.45,
 - An order for a payment of \$375.00 in compensation for damages,
 - An order for a payment of utilities in the amount of \$544.49, and
 - An order for a payment of late fees in the amount of \$525.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this decision is section 19 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him 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 he has been properly served. With his application, the landlord submitted an affidavit stating that tenant had been served with the application, by e-mail, on 25 May 2021, and a copy of that e-mail was submitted with his application. 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 his absence.

7. The landlord amended his application and stated that he was now only seeking \$75.00 in late fees.

Issue 1: Rent - \$1306.45

Relevant Submissions

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 27 January 2020, and a copy of that executed agreement was submitted with his application (■ #1). The agreed rent was set at \$500.00 per month. No security deposit was paid.
9. The landlord stated that the tenant had not been paying his rent, as required, and on 29 September 2020, he issued his tenant a termination notice, and a copy of that notice was submitted with his application (■ #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 09 October 2020. The tenant vacated on 19 October 2020.
10. With his application, the landlord submitted a copy of his rent records (■ #3) showing the payments the tenant had made since he had moved in. According to these records, the tenant paid no rent for February or September 2020, a total of \$1000.00. The landlord also stated that no rent was paid for October 2020 and he is seeking a pro-rated payment of \$306.45, covering the period from 01 October to 19 October 2020.

Analysis

11. I accept the landlord's claim that the tenant has not paid his rent as required. I also accept his claim that he had received no rent for February, September or October 2020. As such, his claim succeeds in the amount of \$1306.45, as claimed.

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$1306.45.

Issue 2: Late Fees - \$75.00

13. The landlord has assessed a late fee of \$75.00.

Analysis

14. 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.

15. As the tenant has been in arrears since February 2020, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Utilities - \$544.49

Relevant Submissions

17. The landlord stated that the tenant was responsible for paying for his own utilities and he was required to have the electricity account placed in his name when he moved in on 27 January 2020. However, the landlord stated that the account was not switched over until 19 February 2020, and he was charged for the electricity the tenant had consumed during that period.

18. With his application, the landlord submitted copies of 2 Newfoundland Power bills showing that he was charged \$426.70 for the period from 09 January to 10 February 2020 (■ #4), and \$117.79 for the period from 10 February to 18 February 2020.

19. The landlord is seeking an order for a payment of utilities in the amount of \$544.49 (\$426.70 + \$117.79).

Analysis

20. I accept the landlord's claim that the tenant had not had the electricity account switched over to his name until 19 February 2020 and that the landlord was charged for the electricity the tenant had consumed from the time he moved in, 27 January 2020, to that date.
21. I find, though, that the tenant is not responsible for the charges billed to the landlord for the 17 days between 09 January to 26 January 2020. I calculate the amount owing to be \$317.81 (\$117.79 + \$200.02 (\$426.70 ÷ 32 days x 15 days)).

Decision

22. The landlord's claim for a payment of utilities succeeds in the amount of \$317.81.

Issue 4: Compensation for Damages - \$375.00

Relevant Submissions

23. The landlord stated that after the tenant moved out he discovered that a pane of glass in the kitchen window was cracked, and with his application he submitted a photograph showing that damage (■#5). The landlord stated that this window was installed in 2010.
24. That window has not been repaired, but the landlord claimed that a new widow would cost between \$150.00 and \$200.00 and he stated that he would probably be charged \$200.00 to have it installed. No quotes or receipts were submitted with his application.

Analysis

25. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.
 2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful

- or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

- (a) determining the rights and obligations of a landlord and tenant;*
- (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
- (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*
- (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement*

26. Based on the landlord's testimony and evidence, I find it probable that the tenant had broken this window during his tenancy. However, the landlord has presented no evidence to the Board establishing the cost of a replacement window or the costs he would incur to have it installed. As such, this portion of his application does not succeed.

Decision

27. The landlord's claim for compensation for damages does not succeed.

Issue 4: Hearing Expenses

28. The landlord paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

29. The landlord is entitled to the following:

a) Rent \$1306.45
b) Late Fees \$75.00
c) Utilities \$317.81
d) Hearing Expenses \$20.00

e) Total Owing to Landlord..... \$1719.26

30 May 2022

Date

