

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-No.25-02

Jacqueline Williams
Adjudicator

Introduction

1. The hearing was called at 9:30 a.m. on September 20, 2021.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord," attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant," did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing I attempted to contact the tenant by phone, however, when she answered the call I introduced myself and explained the purpose of the phone call, she immediately hung up. I understood this to mean that she would not be interested in participating in the Tribunal. 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 with her application ([REDACTED] #01) indicating that she had served the tenant electronically to an address the tenant had provided to the landlord. They had corresponded through this address in the past. The landlord sent the notice on September 07, 2021 at approximately 7:35 p.m.
5. Section 35 of the *Residential Tenancies Act, 2018* says:
 35. (2) A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by
 - ...
(f) sending it electronically where
...

.....

(ii) the tenant has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address;

6. The service of the notice of hearing was completed in compliance with the Act and it was served within the timelines outlined. This is considered good service. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeding with the hearing in her absence.

7. The landlord amended her claim to indicate that the tenant had moved on August 23, 2021 the landlord posted an abandonment notice, then she regained possession of her property on August 24, 2021. This issue is no longer before the tribunal.

Issues before the Tribunal

8. The landlord is seeking the following:

- Rent Paid \$800.00
- Late fees \$75.00
- Utilities Paid \$59.18
- Hearing Expenses reimbursed \$20.00

Legislation and Policy

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

10. Also relevant and considered in this decision is section 35 of the *Residential Tenancies Act, 2018*; service of documents.

Issue 1: Rent paid \$800.00

Relevant Submissions

11. The landlord stated that she had entered a verbal rental agreement on May 13, 2021 with the tenant and then she later followed up with a standard rental agreement (■#04) to outline the terms. It is signed by the landlord and dated for July 14, 2021. The rental agreement is monthly for \$800.00 a month, due on the 1st of each month. The landlord paid the ■ and internet service bill and the tenant reimbursed the landlord for \$150.00 a month, over and above the cost of rental. There was a \$500.00 security deposit paid on May 13, 2021 that the landlord still has in her possession. The tenant moved in on May 28, 2021 and moved out on August 24, 2021.

12. The landlord provided a rental ledger (■#02) indicating that the tenant paid rent for June on May 28, 2021. A payment towards the \$800.00 July rent in the amount of \$600.00 was paid on July 30, 2021. There has been no payment for August rent. The landlord's calculations indicate \$1000.00 owing in rent: \$200.00 from July and \$800.00 for August.

Analysis

13. I accept the landlord's testimony that rent is owed to the landlord. This testimony was corroborated by the submission of the rent ledger indicating that a balance of \$200 was outstanding for rent in July and no additional payments have been made to date.
14. Non-payment of rent is in violation of the rental agreement made between the landlord and tenant.
15. As the tenant was served with a notice to terminate early (████#06) with a termination date of July 26, 2021 and she did move out on August 23, 2021, therefore, she will be charged a daily rate for the month of August.
 - \$800.00 per month x 12 months = \$9,600.00 per year.
 - \$9,600 / 365 days = \$26.30 per day.
 - \$26.30 per day x 23 days = \$604.90.

Therefore the tenant owes \$200.00 for July and \$604.90 for August for a total of \$804.90.

Decision

16. The tenant owes the landlord \$804.90 in rental arrears.

Issue 2: Late Fees \$75.00

Relevant Submissions

17. The landlord submitted a rent ledger (████#02) indicating that the tenant has been in rental arrears starting July 2, 2021 and remained in arrears until the date she gave up possession of the property on August 23, 2021.

Analysis

18. 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.*

19. As the tenant has been arrears since July 2, 2021 the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

20. The tenant shall pay late fees to the landlord in the amount of \$75.00.

Issue 3: Payment of Utilities – \$59.15

Relevant Submissions

21. The landlord provided a ledger (████#03) indicating a balance owing to Eastlink for service from July 1, 2021 until July 12, 2021.

22. The landlord stated that once it became obvious to her that the tenant was not intending to pay for her rental, she contacted Eastlink to mitigate her loss. Eastlink changed her contract and cut the service to the rental. The service ended at midnight on July 13, 2021.

23. The landlord did not provide the bill from Eastlink.

Analysis

24. As the billing from East Link was not included in the package and the burden of proof is the responsibility of the landlord; the landlord's claim for reimbursement fails.

Decision

25. The landlord's claim for reimbursement of the East Link bill fails.

Issue 4: Hearing Expense

26. The landlord submitted the receipt for \$20.00 for the cost of the hearing (████#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the respondent.

Summary of Decision

27. The landlord is entitled to the following:

• Rent totaling.....	\$804.90
• Late fees.....	\$ 75.00
• Hearing Expenses	<u>\$ 20.00</u>
Total.....	<u>\$899.90</u>

September 29, 2021

Date