

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0257-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 1:12 p.m. on 01-November-2021.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.
4. The tenant submitted an Authorized Representative form ([REDACTED] #01), naming [REDACTED] as his representative, she attended by teleconference.

### Preliminary Matters

5. The landlord submitted an affidavit with his application ([REDACTED] #01) stating that the tenant was served by prepaid registered mail sent on 29-June-2021 for a previous hearing date, the Authorized Representative agreed with the service of notice.
6. The landlord amended his application to change rent due from \$450.30 to \$600.12.

### Issues before the Tribunal

7. The Landlord is seeking:
  - Rent Paid \$600.12
  - Late fees \$75.00
  - Premises vacated
  - 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: section 10: Statutory conditions, section 19: notice where failure to pay rent, and section 20: notice where material term of agreement contravened, of the *Residential Tenancies Act, 2018*.

### **Issue 1: Rent paid \$600.12**

#### Landlord Position

10. The landlord stated that they entered into a written lease with the tenant on July 01, 2020. The lease is monthly from the 1<sup>st</sup> of each month to the last day, rent is due on the 1<sup>st</sup> of each month. Rent is set for \$965.00 pay own utilities, with a door crasher promotion of a \$160.00 credit each month, leaving a payment of \$805.00. The tenant's rent is subsidized. The tenant paid a security deposit of \$372.00 on June 26, 2020. The landlord is still in possession of the security deposit.
11. The landlord said that the tenant was expected to change the NL Power bill into his name, he has not done this. They have had numerous conversations with the tenant requesting that he do this.
12. As the tenant did not change the service into his name, the landlord said that the bill is now coming to them. The landlord said that this is not a cost that should be coming to the landlord and it is a cost of the tenant.
13. The cost of the NL Power bill has impacted the payments of the monthly rent. They have added the cost of this bill to the rental ledger ( █ #03).
14. The landlord said that upon arrival into the building that the tenant is expected to have the NL Power bill converted into his name. To date he has not done this, therefore the bill is coming to the owner.

#### Authorized Representative Position

15. The Authorized Representative agrees to the terms of the rental agreement as described by the landlord.
16. The Authorized Representative confirms that the tenant is aware that the NL Power should be transferred into his name and she believes that the name change has not been done yet.

#### **Analysis**

17. The landlord clearly stated that utilities are not part of the rental agreement and that the tenant has been asked on numerous occasions to change the NL Power bill into his name. The Authorized Representative confirmed that the tenant is aware of this expectation, however, he has not made this change to the billing.

18. The landlord included a ledger indicating the amount of rent owed by the tenant which also includes the NL Power bill; as utilities are not part of rent, as per their agreement, stated in paragraph 10, and confirmed by the Authorized Representative in paragraphs 15 & 16. The landlord should not have included this bill as part of the rent ledger [REDACTED] #03) because it is not part of the rental agreement. Therefore, a utility ledger is displayed below:

NL Power bill  
[REDACTED]

Date	Action	Amount	total
1-Jul-20	NL Power	\$ (25.10)	\$ (25.10)
1-Aug-20	NL Power	\$ (26.31)	\$ (51.41)
1-Sep-20	NL Power	\$ (26.51)	\$ (77.92)
1-Oct-20	NL Power	\$ (29.75)	\$ (107.67)
1-Nov-20	NL Power	\$ (28.78)	\$ (136.45)
1-Dec-20	NL Power	\$ (31.51)	\$ (167.96)
1-Jan-21	NL Power	\$ (33.36)	\$ (201.32)
1-Feb-21	NL Power	\$ (32.59)	\$ (233.91)
1-Mar-21	NL Power	\$ (32.84)	\$ (266.75)
Apr-21	NL Power	\$ (29.09)	\$ (295.84)
May-21	NL Power	\$ (29.71)	\$ (325.55)
Jun-21	NL Power	\$ (28.64)	\$ (354.19)
Jul-21	NL Power	\$ (28.10)	\$ (382.29)
Aug-21	NL Power	\$ (27.86)	\$ (410.15)

19. Both the landlord and the Authorized Representative agree that the tenant was aware that it is his responsibility to pay this bill and have it transferred into his name. According to Section 10, of the *Residential Tenancies Act, 2018*:

**Statutory conditions**

**10.** (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

.....

**8. Disconnection of Services** - A landlord or tenant shall not, without the written consent of the other party to the rental agreement, disconnect or cause to be disconnected heat, water or electric power services being provided to the residential premises.

.....

20. The tenant was negligent in his handling of this situation, his actions could have resulted in the power being cut to the apartment. This is in contravention of the rental agreement. The tenant is responsible to pay this bill.

21. Should the tenant not change the NL Power bill into his name immediately, he will be in contravention of his rental agreement and the landlord may take action under Section 20 of the *Residential Tenancies Act, 2018*.

## Decision

22. The tenant shall reimburse the landlord \$410.15 for payment of the NL Power bill.

**Issue 2: Late fees \$75.00**

## Landlord's Position

23. The landlord submitted a rental ledger ( █ #03) indicating cost and payment of rent and the NL Power Bill.
24. The landlord said that the tenant's rent is subsidized as indicating on the ledger.
25. The landlord included the cost of the utility into the ledger for rent.
26. The landlord acknowledges that utilities are not included in rent.

### Authorized Representative Position

27. The Authorized Representative agrees with the statements made by the landlord about rent.

## Analysis

28. To show rental arrears the landlord provided the board with a rent ledger indicating payments and monies due. The landlord's rent ledger (████#03) included the cost of utilities. A new ledger is shown below with the utilities removed, as well as, the door crasher promotion applied in the months where the promotion applies; on the original ledger █████#03 the May 2021 – August 2021 were entered in August 2021:

## Rent ledger

Date	Action	Amount	total
26-Jun-20	payment	\$ 646.00	\$ 646.00
30-Jun-20	payment	\$ 74.50	\$ 720.50
30-Jun-20	payment	\$ 74.50	\$ 795.00
1-Jul-20	door crasher	\$ 160.00	\$ 955.00
1-Jul-20	rent due	\$ (955.00)	\$ -
31-Jul-20	payment	\$ 646.00	\$ 646.00
31-Jul-20	payment	\$ 74.50	\$ 720.50

31-Jul-21		payment	\$ 74.50	\$ 795.00
1-Aug-20		door crasher	\$ 160.00	\$ 955.00
1-Aug-20	rent due		\$ (955.00)	\$ -
28-Aug-20		payment	\$ 646.00	\$ 646.00
1-Sep-20		door crasher	\$ 160.00	\$ 806.00
1-Sep-20	rent due		\$ (955.00)	\$ (149.00)
1-Sep-20		payment	\$ 74.50	\$ (74.50)
1-Sep-20		payment	\$ 74.50	\$ -
1-Oct-20		door crasher	\$ 160.00	\$ 160.00
1-Oct-20	rent due		\$ (955.00)	\$ (795.00)
1-Oct-20		payment	\$ 74.50	\$ (720.50)
1-Oct-20		payment	\$ 74.50	\$ (646.00)
1-Oct-20		payment	\$ 646.00	\$ -
30-Oct-20		payment	\$ 74.50	\$ 74.50
30-Oct-20		payment	\$ 74.50	\$ 149.00
30-Oct-20		payment	\$ 646.00	\$ 795.00
1-Nov-20		door crasher	\$ 160.00	\$ 955.00
1-Nov-20	rent due		\$ (955.00)	\$ -
27-Nov-20		payment	\$ 646.00	\$ 646.00
1-Dec-20		door crasher	\$ 160.00	\$ 806.00
1-Dec-21	rent due		\$ (955.00)	\$ (149.00)
1-Dec-20		payment	\$ 74.50	\$ (74.50)
1-Dec-20		payment	\$ 74.50	\$ -
29-Dec-20		payment	\$ 646.00	\$ 646.00
31-Dec-20		payment	\$ 74.50	\$ 720.50
3-Dec-20		payment	\$ 74.50	\$ 795.00
1-Jan-21		door crasher	\$ 160.00	\$ 955.00
1-Jan-21	rent due		\$ (955.00)	\$ -
29-Jan-21		payment	\$ 646.00	\$ 646.00
1-Feb-21		door crasher	\$ 160.00	\$ 806.00
1-Feb-21	rent due		\$ (955.00)	\$ (149.00)
1-Feb-21		payment	\$ 74.50	\$ (74.50)
1-Feb-21		payment	\$ 74.50	\$ -
25-Feb-21		payment	\$ 646.00	\$ 646.00
1-Mar-21		door crasher	\$ 160.00	\$ 806.00
1-Mar-21	rent due		\$ (955.00)	\$ (149.00)
1-Mar-21		payment	\$ 74.50	\$ (74.50)
1-Mar-21		payment	\$ 74.50	\$ -
1-Apr-21		door crasher	\$ 160.00	\$ 160.00
1-Apr-21	rent due		\$ (955.00)	\$ (795.00)
1-Apr-21		payment	\$ 646.00	\$ (149.00)
1-Apr-21		payment	\$ 74.50	\$ (74.50)
1-Apr-21		payment	\$ 74.50	\$ -
30-Apr-21		payment	\$ 646.00	\$ 646.00
30-Apr-21		payment	\$ 149.00	\$ 795.00

1-May-21	rent due	\$	(955.00)	\$	(160.00)
1-May-21	door crasher	\$	160.00	\$	-
28-May-21		payment	\$	646.00	\$
1-Jun-21	rent due	\$	(955.00)	\$	(309.00)
1-Jun-21		payment	\$	74.50	\$
1-Jun-21		payment	\$	74.50	\$
1-Jun-21		door crasher	\$	160.00	\$
30-Jun-21		payment	\$	74.50	\$
30-Jun-21		payment	\$	74.50	\$
1-Jul-21	rent due	\$	(955.00)	\$	(806.00)
01-Jul-21	door crasher	\$	160.00	\$	(646.00)
2-Jul-21		payment	\$	646.00	\$
30-Jul-21		payment	\$	646.00	\$
30-Jul-21		payment	\$	74.50	\$
30-Jul-21		payment	\$	74.50	\$
1-Aug-21	rent due	\$	(955.00)	\$	(160.00)
1-Aug-21		door crasher	\$	160.00	\$
1-Sep-21		door crasher	\$	160.00	\$
1-Sep-21	rent due	\$	(955.00)	\$	(795.00)
1-Sep-21		payment	\$	74.50	\$
1-Sep-21		payment	\$	74.50	\$
3-Sep-21		payment	\$	646.00	\$
1-Oct-21		door crasher	\$	160.00	\$
1-Oct-21	rent due	\$	(955.00)	\$	(795.00)
1-Oct-21		payment	\$	646.00	\$
1-Oct-21		payment	\$	74.50	\$
1-Oct-21		payment	\$	74.50	\$
29-Oct-21		payment	\$	646.00	\$
1-Nov-21	rent due	\$	(955.00)	\$	(309.00)

29. The rent ledger as shown above indicates that rent has been paid in full and on time for the term of the tenant's rental. The amount outstanding in November is not overdue until midnight of November 01, 2021.

## Decision

30. The landlord's claim for late fees fails.

### **Issue 3: Vacant Possession of property**

#### Landlord's Position

31. The landlord stated that the tenant was served a Landlord's Notice to Terminate Early – Cause, under section 19 of the Residential Tenancies Act for failure to pay rent.
32. The notice was dated and served on June 08, 2021.

#### **Analysis**

33. As shown in the rent ledger, paragraph 28 that on June 08, 2021, the tenant is not in rental arrears. Therefore the notice to terminate is not valid.

#### **Decision**

34. The landlord's claim for vacant possession of the property fails.

### **Issue 4: Hearing expenses reimbursed \$20.00**

35. The landlord's claim for hearing expenses succeeds because the claim for rent/utilities was successful and therefore the tenant is responsible for the cost to file this hearing.

#### **Summary of Decision**

36. The Landlord is entitled to:
  - Utilities paid ..... \$410.15
  - Hearing expenses..... \$ 20.00
  - Total..... \$430.15

The tenant shall pay the landlord \$430.15 for the cost of utilities and the cost of the hearing filing fee.

37. The landlord's submission for an order of vacant possession of the rental premises does not succeed.

November 8, 2021

Date