

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0387-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:47 a.m. on October 07, 2021.
2. The applicant, [REDACTED] hereinafter referred to as landlord1 and landlord2 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 and I was unable to reach him by telephone at the start of the hearing. 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. The landlords submitted the Affidavit of Service ([REDACTED] #01) indicating that landlord1 served the tenant personally on September 16, 2021 of notification of this hearing. 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.
5. The tenant vacated the property on September 17, 2021, therefore the landlord amended their claim and is no longer seeking vacant possession.
6. The landlords are property managers working on behalf of the owners of the property; the [REDACTED]

Issues before the Tribunal

7. The landlord is seeking:
 - Rent paid totaling \$7,200.00
 - Late fees paid totaling \$75.00

- Utilities paid totaling \$5,179.31
- Hearing expenses totaling \$20.00
- Security deposit applied \$1,350.00

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 decision is section 15: failure to pay rent, section 14: security deposit, and section 19: notice where failure to pay rent, of the *Residential Tenancies Act, 2018*.

Issue 1: Rent Paid \$7,200.00

Relevant Submissions

10. The landlords entered into a rental agreement for a term of March 01, 2020 – February 28, 2021. They were in a monthly agreement for \$1,800.00 a month pay own utilities. The tenant paid a security deposit of \$1,350.00 on September 12, 2019.
11. The landlords submitted a rental ledger (■#03) showing monies paid and owed. The submitted document gave a total for rent and utilities totaling \$12,079.31. A calculation of the rent owing is shown in the table below, paragraph 14.
12. The landlords had served a termination notice (■#02), as per Section 19 of the *Residential Tenancies Act: 2018*. The termination date is for August 8, 2021; the tenant vacated the property on September 17, 2021, the tenancy was terminated early; the tenant is not responsible to pay the full months rent.

Analysis

13. Non-payment of rent is a breach of the rental agreement. Rent is to be paid in full before midnight on the day it is due.
14. The table below indicates rental arrears:

Rent ledger

File # ■■■■■

Date	Action	Amount	total
1-Mar-20	rent owed	-1,800.00	-1800
1-Apr-20	rent owed	-1,800.00	-3600
21-Apr-20	rent paid	1,800.00	-1800

1-May-20	rent owed		-1,800.00	-3600
22-May-20		rent paid	200.00	-3400
22-May-20		rent paid	1,800.00	-1600
1-Jun-20	rent owed		-1,800.00	-3400
1-Jul-20	rent owed		-1,800.00	-5200
13-Jul-20		rent paid	2,000.00	-3200
1-Aug-20	rent owed		-1,800.00	-5000
1-Sep-20	rent owed		-1,800.00	-6800
4-Sep-20		rent paid	1,500.00	-5300
25-Sep-20		rent paid	2,000.00	-3300
1-Oct-20	rent owed		-1,800.00	-5100
23-Oct-20		rent paid	2,000.00	-3100
1-Nov-20	rent owed		-1,800.00	-4900
23-Nov-20		rent paid	2,000.00	-2900
1-Dec-20	rent owed		-1,800.00	-4700
23-Dec-20		rent paid	2,000.00	-2700
1-Jan-21	rent owed		-1,800.00	-4500
31-Jan-21		rent paid	2,000.00	-2500
1-Feb-21	rent owed		-1,800.00	-4300
1-Mar-21	rent owed		-1,800.00	-6100
8-Mar-21		rent paid	2,000.00	-4100
1-Apr-21	rent owed		-1,800.00	-5900
5-Apr-21		rent paid	2,000.00	-3900
13-Apr-21		rent paid	2,000.00	-1900
1-May-21	rent owed		-1,800.00	-3700
10-May-21		rent paid	2,000.00	-1700
1-Jun-21	rent owed		-1,800.00	-3500
4-Jun-21		rent paid	2,000.00	-1500
1-Jul-21	rent owed		-1,800.00	-3300
1-Aug-21	rent owed		-1,800.00	-5100
1-Sep-21	rent Sept 1 - 17, 2021		-1,006.06	-6106.06

The tenant was served a termination notice and moved September 17, 2021

The tenant will pay a daily rate for September

Calculated as follows:

$\$1,800.00 \times 12 \text{ months} = \$21,600.00$

$\$21,600.00 \text{ divided by } 365 \text{ days} = \59.18 per day

$\$59.18 \text{ per day} \times 17 \text{ days} - \$1,006.06$

15. The tenant owes the landlords \$6,106.06.

Decision

16. The landlord's claim for rent succeeds in the amount of \$6,106.06.

Issue 2: Late fees \$75.00

Relevant Submissions

17. The table in paragraph 15 indicates that the tenant was in rental arrears from the beginning of his tenancy.

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 he moved into the unit, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Utilities \$5,179.31

Relevant Submissions

21. As indicated in paragraphs 10 the cost of utilities was not included in the rental amount
22. The owner of the property was billed and subsequently paid for both the Newfoundland Power and the [REDACTED] bills. The landlords provided a ledger ([REDACTED]#03) with both of these bills included, as well as, the billing from both companies ([REDACTED]#05). The total amount owing is \$5,179.31.
23. After the bill in December 2020, the tenant did place the bill for [REDACTED] service in his name.

Analysis

24. The billing for electricity is as follows:

Date	Action	Amount	total
1-Mar-20	bill received	-238.57	-238.57
1-Apr-20		-139.18	-377.75
1-May-20		-140.7	-518.45
1-Jun-20		-236.76	-755.21
1-Jul-20		-257.22	-1012.43
1-Aug-20		-217.13	-1229.56
1-Sep-20		-204.7	-1434.26
1-Oct-20		-201.8	-1636.06
1-Nov-20		-312.37	-1948.43
1-Dec-20		-151.75	-2100.18
Jan-21		-104.35	-2204.53
Feb-21		-185.9	-2390.43
Mar-21		-399.6	-2790.03
Apr-21		-379.28	-3169.31
May-21		-257.65	-3426.96
Jun-21		-227.22	-3654.18
Jul-21		-275.98	-3930.16
Aug-21		-225.18	-4155.34

25. The billing for oil is as follows:

Date	Action	Amount	Total
1-Mar-20	oil bill	-101.2	-101.2
1-Apr-20		-451.58	-552.78
1-Nov-20		-221.21	-773.99
1-Dec-20		-249.98	1023.97

26. The landlords submitted into evidence both the ledger [REDACTED] #03) as well as the billing [REDACTED] #05) to verify the cost of these services.

Decision

27. The landlords claim for utilities succeeds in the amount of \$5,179.31 (4155.34 +1023.97).

Issue 4: Hearing Expenses

Relevant Submissions

28. The landlord submitted the receipt for \$20.00 for the cost of the hearing [REDACTED]#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the respondent.

Issue 4: Security deposit applied against payment owed

Relevant Submissions

29. As shown in paragraph 10, the tenant has paid a security deposit of \$1,350.00 on September 12, 2019. The landlord is requesting to retain that deposit against the monies owing.

30. Section 14.9 of the *Residential Tenancies Act; 2018* states:

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

31. The landlord has proven the claim that monies are owed by the tenant and may therefore retain the security deposit against that debt.

Decision

32. The landlord's claim to retain the security deposit succeeds in the amount of \$1,350.00

Summary of Decision

35 The landlord is entitled to:

- Rent \$6,106.06.
- Late fees..... 75.00
- Utilities..... 5,179.31
- Security deposit (1,350.00)
 - **Total** **\$ 10,010.37**

October 19, 2021 _____
Date

