

Residential Tenancies Tribunal

Application 2021-No.14-NL

Decision 21-0014-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 22-February-2022.
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 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 landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing, by email on 01-February-2022 at 1:15 p.m. The landlord verified that the email was provided to him by the tenant and that they had used email to communicate. 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 landlord amended his application to reflect monies currently owed. The landlord amended rent from \$7,500.00 to \$10,000.00; he amended utilities from \$1,070.88 to \$4,581.04; he is also seeking to retain the security deposit of \$1,875.00.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$10,000.00

- Utilities \$4,581.04
- Security deposit applied against monies owed \$1,875.00
- Premises vacated
- Hearing expenses reimbursed \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$10,000.00

Relevant Submissions

9. The landlord said that he entered into a written one year lease with the tenant on 01-December-2020 ending 30-November-2021. The tenant pays \$2,500.00 rent per month, for the period of the 1st to the end of each month; rent is due on the 1st day of the month. The landlord said that the tenant paid a security deposit of \$1,875.00 on 01-December-2020 and that he is still in possession of that deposit.
10. The landlord said that the tenant understood that utilities are not included in the rent and that he was to change the billing with NL Power over into his name. The landlord said that the tenant never made the change and he instead would pay the landlord every month for the amount owed.
11. The landlord submitted a rent ledger (LL#02) that indicates that the tenant paid rent every month prior to November 2021. The tenant has not paid any rent on the unit since that time.
12. The landlord is seeking rent for November, December, January and February: 4 months x \$2,500.00 for a total of \$10,000.00

Analysis

13. Nonpayment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant hasn't paid rent from November to present day.
14. This tribunal doesn't consider future rent, therefore a calculation of a daily rate, will follow for February up to the date of the hearing:

$$\$2,500.00 \times 12 \text{ months} = \$30,000.00 \text{ per year} / \$30,000.00 \text{ a year divided by 365 days} = \$82.19 \text{ a day. The hearing is on the 22-February-2022. } 22 \text{ days} \times 82.19 = \$1,808.18.$$

November 2021	\$2,500.00
December 2021	2,500.00
January 2022	2,500.00
February 1 – 22, 2022	1,808.18
Total	\$9,308.18

15. I find that the tenant owes the landlord \$9,308.18 for rent.

Decision

16. The landlord's claim for rent succeeds in the amount of \$9,308.18.

Issue 2: Utilities paid \$4,581.04

Relevant Submissions

17. As indicated in paragraph 10, the landlord stated that the utilities are not included in the tenants rent. The landlord said that the tenant had agreed to have the utilities switched into his own name, but for a variety of reasons he never did this. The landlord said he let it go because the tenant did pay him each month for the utilities that were billed.

18. The landlord said that the tenant stopped paying him for the utilities beginning with the September billing. He provided a utilities ledger (LL#03) into evidence.

September 2021	\$ 273.39
October 2021	245.03
November 2021	527.13
December 2021	715.88
January 2022	965.48
February 2022	954.13
March 2022	900.00
Total	\$4,581.04

19. In addition to the utilities ledger the landlord provided the email thread from November, of him asking the tenant when he can make these payments (LL#07). The landlord also provided the billing from NL Power (LL#04) for the above months with the exception of March. The landlord pointed out that the billing comes in after the power has been used, the bill for March would be for February power and has not come in yet.

20. The landlord said that he estimated the March bill for \$900.00. He said he choose to go lower than the January and February bills to err on the side of caution.

21. The landlord said that he was making the payments up until the \$527.13 billing in November 2021. At that time he felt that the tenant was not going to be paying for these bills and the landlord said he couldn't continue to pay the mortgage and utilities for this house; so he stopped paying the utilities.

Analysis

22. I accept that the tenant has not been paying the landlord for utilities and that he is responsible for that payment. The landlord provided billing for the rental unit up to and including the bill that he received in February 2022.
23. The landlord was unable to provide the billing for March and estimated the amount that would be billed. It is impossible for this board to adequately predict the amount that will be billed when the March NL Power bill comes in. The landlord provided invoices showing the exact amount due for each month up to the February billing, I therefore find that the tenant does owe the landlord for utilities and will pay the landlord for the invoices submitted to this board. The landlord may file another application for the March billing, once it comes due, if he would like to recoup this loss.
24. The tenant will pay the landlord \$3,681.04.

Decision

25. The landlord's claim for utilities succeeds in the amount of \$3,681.04.

Issue 3: Security deposit applied against monies owed \$1,875.00

Relevant Submissions

26. The landlord stated in paragraph 9 that the tenant had paid a security deposit of \$1,875.00 and he is requesting that he retain this deposit towards the financial loss that he has incurred.

Analysis

27. The landlord's claim for losses has been successful, paragraphs 16 and 25, and he shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

14. (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

Decision

28. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,875.00.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

29. The landlord submitted a termination notice into evidence (LL#05). The notice is on a landlord's notice to terminate early – cause form for failure to pay rent. The notice is signed and dated for 04-Jan-2022 with a termination date of 15-January-2022. The landlord said that he delivered the notice in person on the date signed and also followed up with an email.

Analysis

30. Section 19 of the Residential Tenancies Act, 2018, states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

.....

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

*the amount of rent payable by a tenant is **overdue for 5 days or more**, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified **date not less than 10 days after** the notice is served on the tenant.*

.....

(4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

.....

31. As determined in paragraph 14, the tenant's rent is overdue beginning 02-November-2021. When the landlord serves the tenant with notice of termination on 04-January-2022 the rent is unpaid for more than the 5 days required by the Act. The landlord also has dated the termination to end on 15-January-2022 which is 10 clear days from the time it was served.

32. The notice is signed, dated, and served in accordance with Section 19 (4).
33. The landlord's notice is valid and the tenant should have moved on or before, 15-January-2022.
34. A daily rate of rent was calculated in paragraph 14. Beginning 23-February-2022 the tenant will pay the daily rate of rent, \$82.19 until such time as the landlord regains possession of his property.

Decision

35. The landlord's claim for an order for vacant possession of the rental premises succeeds.
36. The tenant should have vacated the property on or before 15-January-2022. The tenant is to vacate the property immediately.
37. Beginning 23-February-2022 the tenant will pay the daily rate of rent, \$82.19 until such time as the landlord regains possession of his property.
38. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sheriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

Issue 5: Hearing expenses reimbursed \$20.00

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

Summary of Decision

40. The tenant owes the landlord \$ 11,134.22 as follows and the landlord shall retain the security deposit of \$1,875.00 against monies owed.

Rent	\$9,308.18
Utilities	3,681.04
Hearing expenses	20.00
Less security deposit	(1,875.00)
Total	\$11,134.22

The landlord's will be granted an Order of Possession.

The tenant is to vacate the property immediately.

Beginning 23-February-2022 the tenant will pay the daily rate of rent, \$82.19 until such time as the landlord regains possession of his property.

The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sheriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

February 24, 2022

Date

[REDACTED]
Jacqueline Williams, Adjudicator
Residential Tenancies Office