

Residential Tenancies Tribunal

Application 2022-No.31-NL

Decision 22-0031-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 19-April-2022.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” respectively, 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 her 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 she has been properly served. The landlords submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail on 02-April-2022 and they included the tracking number which verifies that the package was received on 07-April-2022. In addition to this the landlords sent an email notification to the tenant on 04-April -2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.
5. Landlord1 amended the claim to show utilities owed up to present day from \$514.49 to \$816.12.

Issues before the Tribunal

6. The landlords are seeking:
 - Rent \$4,200.00
 - Utilities \$816.12

- Security deposit applied to monies owed \$1,050.00
- Vacant Possession of the rental premises
- Hearing expenses reimbursed \$40.92

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 \$4,200.00

Relevant Submissions

9. Landlord1 said that they had a written rental agreement (LL#02) with the tenant, however the tenant never signed. They have had a verbal agreement based on the terms in the written agreement. The tenant moved in June 2021. They have a monthly agreement for \$1,400.00 per month rent. The rental period is from the 1st day of the month to the last and rent is due on the first. Utilities are not included in the rent. The tenant was expected to transfer the utilities into her name, she never did this, but instead would pay the utilities directly to the landlord. The tenant paid a security deposit of \$1,050.00 on 12-May-2021. The landlords are still in possession of the deposit.
10. The landlords submitted a rent and utilities ledger (LL#03). The rent ledger is as follows:

Rent ledger File 2022-No.31-NL			
Date	Action	Amount	total
12-May-21	security deposit	1050.00	1050.00
12-May-21	security deposit payment	-500.00	550.00
13-May-21	payment	-1950.00	-1400.00
1-Jun-21	rent due	1400.00	0.00
25-Jun-21	payment	-1400.00	-1400.00
1-Jul-21	rent due	1400.00	0.00
2-Aug-21	rent due	-1400.00	-1400.00
2-Aug-21	payment	1400.00	0.00
1-Sep-21	rent due	-1400.00	-1400.00
1-Sep-21	payment	1400.00	0.00
1-Oct-21	rent due	-1400.00	-1400.00
12-Oct-21	payment	1400.00	0.00
1-Nov-21	rent due	-1400.00	-1400.00
15-Nov-21	payment	1400.00	0.00

1-Dec-21	rent due	-1400.00	-1400.00
1-Jan-22	rent due	-1400.00	-2800.00
1-Feb-22	rent due	-1400.00	-4200.00
3-Feb-22	payment	1400.00	-2800.00
17-Feb-22	payment	1400.00	-1400.00
1-Mar-22	rent due	-1400.00	-2800.00
1-Apr-22	rent daily rate from 01-April - 19-April	-874.57	-3674.57

A daily rate of rent is calculated for April 1- 19

$\$1,400.00 \times 12 \text{ months} = \$16,800.00$

$\$16,800.00 \text{ divided by } 365 \text{ days} = \46.03

$\$46.03 \text{ per day} \times 19 \text{ days} = \874.57

11. Landlord1 said that they stopped receiving rent payments from the tenant beginning December 2021. She indicated that they did receive payments in February, however, as indicated by the ledger, the tenant remains in arrears.

Analysis

12. Non-payment of rent is a violation of the rental agreement. The landlords have submitted a rent ledger and provided testimony to show rent owed.
13. The rent ledger displayed in paragraph 10, reflects the rent ledger submitted by the landlord (LL#03). The April 2022 rent has been calculated to a daily rent amount; as this board does not consider future rent. The rent for April is shown as \$874.57 for the period of April 01-19. The total amount owing is \$3,674.57.
14. I accept the evidence submitted by the landlords and landlord1's testimony of rent owed. The tenant shall pay the landlords \$3,674.57 for rent owed.

Decision

15. The landlords' claim for rent succeeds in the amount of \$3,674.57.

Issue 2: Utilities \$816.12

Relevant Submissions

16. Landlord1 said that the tenant was expected to change the NL Power bill into her name, she never did this. (Paragraph 9). She said they let this slip because the tenant was consistently paying them the amount due from NL Power each month. As time went on the payments started occurring less frequently. They submitted a rent and utilities ledger (LL#03). The utilities portion is reflected below:

Utilities ledger
2022-No.31-NL

Date	Action	Amount	total
23-Jun-21	NL Power	-116.06	-116.06
25-Jun-21	payment	116.06	0.00
23-Jul-21	NL Power	-98.50	-98.50
6-Aug-21	payment	98.50	0.00
23-Aug-21	NL Power	-109.61	-109.61
1-Sep-21	payment	109.61	0.00
22-Sep-21	NL Power	-123.77	-123.77
12-Oct-21	payment	123.77	0.00
22-Oct-21	NL Power	-226.88	-226.88
15-Nov-21	payment	226.88	0.00
22-Nov-21	NL Power	-441.99	-441.99
21-Dec-21	NL Power	-501.60	-943.59
11-Jan-22	payment	943.59	0.00
21-Jan-22	NL Power	-522.32	-522.32
17-Feb-22	payment	522.32	0.00
21-Feb-22	NL Power	-470.58	-470.58
22-Mar-22	NL Power	-184.90	-655.48
12-Apr-22	NL Power	-160.64	-816.12

17. The landlords submitted the NL Power bills for the outstanding months: February (LL#04), March (LL#05) and April (LL#06).
18. The landlords are claiming full reimbursement for the NL Power bill totaling \$816.12.

Analysis

19. The tenant violated the rental agreement by not changing the billing into her name as agreed. The landlord's willingness to accommodate and the tenant's payments indicates an agreement for the landlords to make the payment and be reimbursed for same. The tenant shall pay the landlords for the utilities owed.

Decision

20. The landlords' claim for utilities succeeds in the amount of \$816.12.

Issue 3: Security deposit applied against monies owed \$1,050.00

Relevant Submissions

21. As per paragraph 9, the landlords have declared that, the tenant paid a security deposit of \$1,050.00; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenants for damages to the apartment.

Analysis

22. The landlord's claim for loss has been successful, paragraphs 15 & 20, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

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

23. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,050.00.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

24. The landlords submitted a termination notice (LL#07). The termination notice is dated and signed for 20-December-2021 with a termination date of 10-January-2022. The notice is on a "landlord's notice to terminate early – cause" form for failure to pay rent.
25. Landlord2 said that he served this to the tenant in person, on the day it is signed: 20-December-2021.
26. Landlord2 said that he spoke with the tenant on 11-January-2022 and she told him she wasn't moving.

Analysis

27. The termination notice served by landlords on the tenant (LL#07) is in accordance with Section 19 of the *Residential Tenancies Act, 2018*, as follows:

Notice where failure to pay rent

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

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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.

.....

28. As per the table in paragraph 10, the tenant was in rental arrears on 02-December-2021 and remained in arrears up to and including the date of termination of rental agreement on 10-January-2022.
29. The landlords gave the tenant more than 10 clear days' notice and served the notice, within the guidelines of the Act.
30. The termination notice is valid and the tenant should have moved on or before 10-January-2022.

Decision

31. The landlords' claim for an order for vacant possession of the rental premises succeeds.
32. The tenant should have vacated the property on 10-January-2022. The tenant is to vacate the property immediately.
33. The tenant shall pay a daily rate of rent (as calculated in the table paragraph 10) of \$46.03 per day, beginning 20-April-2022, until such time as the landlords regain possession of their property.

Issue 5: Hearing expenses reimbursed \$40.92

34. The landlord submitted the receipts for \$40.92 for the cost of the hearing: \$26.04 (LL#09) and the cost of pre-paid registered mail \$14.88 (LL#08). Pursuant to policy 12.01, the landlords are entitled to reimbursement of those costs from the tenant.

Summary of Decision

35. The tenant shall:

Pay the landlord \$3,481.61, as follows:

- Rent \$3674.57
- Utilities 816.12
- Hearing expenses 40.92
- Less security deposit (1,050.00)
 - Total \$3 481 61

Pay a daily rate of rent, \$46.03 per day, beginning 20-April-2022 until such time as the landlords regain possession of their property.

Vacate the property immediately

Pay to the landlords 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.


The landlord will:

Be awarded an Order of Possession.

Retain the security deposit of \$1,050.00 towards monies owed.

April 26, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office