

Residential Tenancies Tribunal

Application 2022 No. 139SJ

Decision 22-0139-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 24 May 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises;
 - An order for a payment of rent in the amount of \$603.88; and
 - An order for a payment of late fees in the amount of \$75.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. 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 with her application stating that she sent the application and notice of the hearing to the tenant by registered mail, on 23 March 2022. The associated tracking history shows that the letter was unclaimed and was eventually returned to the landlord. Section 42.(6) of the *Residential Tenancies Act, 2018* stated that where the application is sent by registered mail it is considered served on the fifth day after mailing—in this case, 28 March 2022. 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.

7. The landlord amended her application at the hearing and stated that she was no longer seeking an order for vacant possession as the tenant was removed by the sheriff in mid-May 2022, as result of an order for possession issued by this Section on 28 April 2022 (2022 No. 58NL). The landlord also amended her claim for rent and stated that she was now seeking a total of \$734.89.

Issue 1: Rent - \$734.89

Relevant Submissions

8. The landlord stated that she had entered into a month-to-month rental agreement with the tenant that started on 01 July 2020. The agreed rent was set at \$805.00 per month and the landlord testified that the tenant had paid a security deposit of \$372.00.
9. The landlord terminated their rental agreement, effective 31 March 2022, and the tenant was removed by the sheriff in mid-May 2022.
10. The landlord submitted rent records with her application showing the payments she had received from the tenant since he moved into the unit. The landlord stated that when the tenant first moved in, the rent was set at \$795.00 and it was paid on his behalf by the Department of Advanced Education and Skills (AES) and by Newfoundland Labrador Housing (NLH). On 01 November 2021, that rent was increased by \$10.00, to \$805.00 per month, but AES and NLH continued to only pay \$795.00 per month. The landlord stated that this accounts for \$160.00 of the \$734.89 that she is seeking through this claim.
11. The landlord also stated that the tenant had not been paying for his electricity usage, and those charges were billed to the landlord, which were in turn added to the rent ledger. The landlord acknowledged that these charges were not rent and that she was not entitled to claim those costs though this application.

Analysis

12. The landlord's rent records show that she had charged the tenant a total of \$664.89 for his electricity usage. I agree with the landlord that these charges are not "rent", and I have removed that amount from the ledger. This leaves an outstanding balance of \$70.00, which accounts for the \$10.00 difference between the \$805.00 monthly rent and the \$795.00 the landlord had been receiving from AES and NLH between November 2021 and May 2022. The landlord's claim therefore succeeds in that amount.

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$70.00.

Issue 2: Late Fees - \$75.00

14. The landlord has assessed a \$75.00 late fee

Analysis

15. 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.

16. As the tenant has been in rental arrears since 02 November 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security Deposit

18. The landlord stated that the tenant had paid a security deposit of \$372.00. As her claim for rent and late fees has been successful, she is entitled to retain \$145.00 of that deposit and the remaining \$227.00 shall be returned to the tenant, as follows:

| | |
|-------------------------------------|--|
| a) Refund of Security Deposit | \$372.00 |
| b) LESS: Rent Owing | (\$70.00) |
| c) LESS: Late Fees..... | (\$75.00) |
| d) Total Owing to Tenant..... | <u>\$227.00</u> |

03 November 2022

Date

John R. Cook
Residential Tenancies Tribunal
