

Residential Tenancies Tribunal

Application 2022 No. 146NL

Decision 22-0146-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 23 March 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. 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 payment of rent in the amount of \$4,575.00;
 - An order for payment of utilities in the amount of \$1,546.91; and
 - An order for payment of “Other Expenses” totalling \$3,173.33.

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 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 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 landlord submitted an affidavit with his application stating that he had served the tenant, by e-mail, on 01 March 2022, and a copy of that e-mail was submitted with his application. 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 his application at the hearing and stated that he was now seeking \$4550.00 in rent and \$1732.60 in utilities.

Issue 1: Rent Owing - \$4550.00

Relevant Submissions

8. The landlord stated that he had entered into a verbal rental agreement with the tenant in February 2021.
9. The landlord submitted comprehensive rent records as evidence (████ #1). He confirmed that the initial rent for the premise was \$950.00 and on 01 July 2021 this amount was reduced to \$875.00 a month, retroactively, to the start of the rental agreement.
10. The landlord's records show that the tenant had made 13 rent payments during this tenancy, totalling \$7125.00. The landlord calculates that since the tenant owed \$875.00 per month, for a 13 month period, she is currently in arrears in the amount of \$4550.00.

Analysis

11. Based on the information presented by the landlord as evidence and discussed during the hearing, it is reasonable that the amount claimed in unpaid rent is indeed outstanding from the tenant.
12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter. I calculate the amount owing to be \$4036.71 (\$3375.00 for the period ending 28 February 2022 and \$661.71 for March 2022 (\$875.00 per month x 12 months = \$10,500.00 per year ÷ 365 days per year = \$28.77 per day x 23 days)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$4036.71.
14. The tenant shall pay a daily rate of rent in the amount of \$28.77, beginning 24 March 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Electrical Utilities - \$1732.60

Relevant Submissions

15. The landlord stated that as per the verbal rental agreement, he was to communicate to the tenant on a monthly basis the amount of money due each month for electricity and that she was to pay him for this amount on a monthly basis in addition to the abovementioned rent. He indicated that he did not provide the tenant with copies of the Newfoundland Power bills for the rental premise.
16. All invoices for the rental premise were submitted as evidence in this dispute from 01 April 2021 until 01 February 2022 (█ #2). In addition to these amounts, the landlord indicated that a March 2022 bill was also received from Newfoundland Power in the amount of \$185.61. The landlord calculates that the tenant owes \$1732.60 for these electrical utilities.

Analysis

17. Based on the information presented by the landlord as evidence and discussed during the hearing, it is reasonable that the amount claimed in unpaid electric utilities is indeed outstanding from the tenant.

Decision

18. The landlord's claim for \$1,732.60 in unpaid electric utilities for the rental premise from the Tenant is successful

Issue 3: "Other" Expenses - \$3173.33

Relevant Submissions

19. The landlord identified two items as constituting the \$3,173.33 that he was claiming as "other" expenses: unpaid bills for oil delivered to and used at the rental premise (in the amount of \$2,543.33) as well as monies that he had loaned the tenant from rent previously paid (in the amount of \$630.00).
20. The landlord submitted as evidence a Transaction Report from Western Petroleum (█ #2) showing transactions from 01 March 2021 through 17 February 2022.
21. As per the transaction report, total costs of \$3,252.49 are identified for oil deliveries and associated late fees.
22. The landlord indicated that he had provided the tenant with a full tank of oil when she first occupied the rental premise. He also spoke of an instance in April 2021 when he assisted the tenant by facilitating an emergency fill from Western

Petroleum for oil at the rental premise. From that time until January 2022, the landlord indicated that the tenant continued to receive regular oil deliveries at the rental premises without the knowledge and or approval of the landlord.

23. The landlord further noted that the tenant has since continued to receive regular oil fill ups from Western Petroleum without his consent on that same account.
24. When asked how the original verbal rental agreement addressed the issue of obligations for paying for the oil heat at the rental premise, the landlord indicated that this was unaddressed. The landlord further spoke of how he perceived the tenant's actions in receiving this oil to be "bordering on criminal". As shown in the Transaction Report provided, the landlord has made payments of \$2,682.53 for oil.
25. Regarding the matter of the purported loan from rent in the amount of \$630.00 the landlord acknowledged that this loan was not related to the rental premise.

Analysis

26. There are a few things to consider. The landlord indicated:
 - That matters of payment for oil were not addressed in the rental agreement;
 - That he had on more than one occasion directly paid to fill the oil tank; and
 - That he believed the tenant's actions regarding the filling of the oil tank to be "bordering on criminal".
27. Because of the above and in consideration of the absence of the tenant, doubt exists regarding any established obligation of the tenant to pay for delivery and use of oil at the rental premises. Furthermore, it is noted that the Transaction Report submitted as evidence to this hearing notes the physical address of the landlord's own property and not the address of the identified rental premise.
28. Regarding the identified "loan" cost, these are outside of the scope of the *Residential Tenancies Act, 2018* and will not be considered relevant to this claim.

Decision

29. The landlord's claim for payment of \$3,173.33 for "other" expenses fails.

Issue 4: Vacant Possession of Rented Premises

Relevant Submissions

30. With his application, the landlord submitted a copy of a termination notice (█ #3) which he stated he had placed in the tenant's mailbox on 17 September 2021. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 02 October 2021.

31. The landlord stated that the tenant has not moved out, as required, and he is seeking an order for vacant possession of the rented premises.
32. Although the tenant ought to have vacated the unit back in October 2021, the landlord stated at the hearing that he was willing to allow the tenant to remain on at the property until 31 March 2022.

Analysis

33. 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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

34. According to the landlord's records, on 17 September 2021, the day the termination notice was issued, the tenant was in arrears in the amount of \$3000.00, and she had been in arrears since April 2021. The records also show that no payments were made by the tenant prior to 02 October 2021, the effective termination date of that notice.
35. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice

Decision

36. The landlord's claim for an order for vacant possession of the rented premises succeeds.

37. 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.

Summary of Decision


38. The landlord is entitled to the following:

- A payment of \$5769.31, determined as follows:

a) Rent Owing	\$4036.71
b) Utilities	\$1732.60
c) Total	<u>\$5769.31</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$28.77, beginning 24 March 2022 and continuing to the date the landlord obtains possession of the rental unit,
- The tenant shall also 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.

28 March 2022

Date


John R. Cook
Residential Tenancies Tribunal