

Residential Tenancies Tribunal

Application 2022 No. 0495 NL

Decision 22-0495-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:03 AM on 21 July 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "tenant1", did not participate in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as "tenant2", participated in the hearing.
5. Two affidavits of services were provided, confirming that both tenant1 and tenant2 were served by registered mail of the claims against them (L#1). Proof of tracking was also provided, indicating that that tenant2 picked up her package but tenant1 did not pick up his. Subsection 42(6) of the *Residential Tenancies Act* considers items sent by registered mail to have been served "on the fifth day after mailing".
6. The details of the claim were presented as a month-to month agreement with rent set at \$800.00 per month since 10 May 2021. A security deposit in the amount of \$400.00 was collected and a copy of the written rental agreement was provided (L#2). The landlord testified and tenant2 agreed that monthly rent included an allowance for \$200.00 in utility (Newfoundland Power) charges and that if and when more than \$200.00 was consumed each month, the tenants were to reimburse the landlord at cost.
7. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

8. The landlord is seeking the following:
 - Payment of rent in the amount of \$3,420.00;
 - Payment of utilities in the amount of \$697.91;
 - Payment of late fees in the amount of \$75.00;
 - Vacant possession of the rental premises; and
 - An order to use the security deposit in the amount of \$400.00 against monies owing.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this case is sections 14, 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

11. Tenant2 testified that she vacated the rental premises on 02 June 2022 and the landlord testified that he assisted with her efforts to vacate the rental premises. Tenant1 remains in occupancy of the rental unit. Tenant1 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*.
12. 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 they have been properly served.
13. As tenant1 was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
14. The landlord testified during the hearing that he would remove tenant2 as a named party from any order produced by this tribunal so long as the amounts that he was claiming did not change. The landlord testified that he is seeking monies owed from tenant1 only.
15. The landlord amended his claim for rent owing to \$4,240.00 and his claim for utilities to \$847.00.

Issue 1: Payment of Rent (\$4,240.00)

Landlord's Position

16. The rental unit is a 3 bedroom house located at [REDACTED]. He testified that he owns and rents about twenty other similar properties. The landlord submitted a copy of his rent ledger showing rent owing in the amount of \$3,420 as of 30 June 2022 (L#3). The landlord testified that no payments have been received since the ledger was submitted and that current arrears are \$4,240.00.
17. The landlord also referenced copies of text messages between himself and tenant1 and testified that there was always a sad story and always an excuse from tenant1 when it came to paying rent (L#4, L#5). The landlord testified that he received rent regularly and reliably through E-transfer from May – Fall 2021 from tenant2 but that he has struggled to collect rent since then.
18. The landlord testified that an agreement was established when arrears became significant in early 2022 for the parents of tenant1 to pay rent to the landlord for the rental premises. However these payments were sporadic did not pay off the full extent of the tenant's arrears. As shown in the text messages referenced above, tenant1 would leave envelopes of cash at different stores that landlord would also attend when he would actually provide rent from his parents.
19. The landlord testified that he did not acknowledge tenant2's original departure from the rental premises in September 2021, because it is his experiences that couples reconnect more often than not. The landlord also testified that he saw tenant2 with tenant1 when he dropped off his Christmas 2021 turkey.

Tenant's Position

20. Tenant2 testified that she left the rental premises in September 2021 and provided proof of her email to the landlord asking for her name to be removed from the lease. She also testified that she returned to live in the rental premises in late December 2021 and testified that she "learned a lot" from reading the text messages between the landlord and tenant2 (L#12 and L#13).
21. In particular, tenant2 testified that she had understood rent to be paid up, including utilities since rent was being paid in 2022 by tenant1's parents. Tenant2 testified that she believed that tenant1 was skimming from rent money provided by his parents, and sometimes not even delivering any payments to the landlord.

Analysis:

22. I accept the landlord's claim and tenant2's acknowledgement that there are significant rental arrears. Because the landlord was also seeking an order for vacant possession of the rented premises, I find that he is entitled to payment of

rent to the date of the hearing and a per diem thereafter until he regains possession of the rental premises.

23. A review of the rent ledger submitted, confirms that of the 8 months between November 2021 and June 2022, the landlord charged \$6,400 in rent (e.g., 8 x \$800.00) but only received rent in the amount of \$2,980.00 leaving arrears of **\$3,420.00** as at 30 June 2022.
24. Because the hearing occurred on 21 July 2022, the landlord is entitled to rent in the amount of **\$3,972.30** and a rental per diem of **\$26.30** for each day that tenant¹ remains in possession of the keys to the rental premises from 22 July 2022 onwards.
25. These amounts were arrived at through the following calculations:
 - $\$800.00 \times 12 = \$9600.00 / 365 = \$26.30$ per day
 - $\$26.30 \times 21 = \552.30 for July 1 - 21, 2022
 - $\$3,420.00 + \$552.30 = \$3,972.30$

Decision

26. The landlord's claim for rent succeeds in the amount of \$3,972.30.

Issue 2: Payment of Utilities (\$847.48) Landlord's Position

27. The landlord testified that it is written in the rental agreement (L#2) that he would seek reimbursement for monthly utility costs in excess of \$200 (as accounted for in the \$800 monthly rent). As evidence of his claims, the landlord submitted a copy of his Utility Ledger (L#6) that referenced his total claims for payment in the amount of \$847.48 for cumulative charges in excess of \$200.00 a month for six specific months during the tenancy (L#7).
28. Copies of NL Power invoices were also provided for each claim:
 - December 2021 = \$154.80 (L# 8)
 - January 2022 = \$171.96 (L#9)
 - February 2022 = \$160.76 (L#10)
 - March 2022 = \$176.30 (L#11)
 - April 2022 = \$134.03 (L#12)
 - May 2022 = \$49. 50 (L#13)
29. When questioned on how he attempted to collect payment of utilities, the landlord testified, "why would I expect to be paid utilities if I was not even paid rent?"

Tenant's Position

30. Tenant2 testified that she agreed to the landlord's explanation for compensation of utility costs over \$200.00 a month. She also testified that she incorrectly believed that utilities and rent were fully paid up prior to her vacating the rental premises on 02 June 2022.

Analysis

31. I accept the landlord's claim and evidence and tenant2's acknowledgement that costs for utilities, over a monthly allowance, are owing. A review of the rental agreement, utility ledger and utility bills confirms that the landlord is entitled to his claimed \$847.48 in payment for utilities owing from the rental premises.

Decision

32. The landlord's claim for payment for utilities succeeds in the amount of \$847.48.

Late Fees (\$75.00) Relevant Submission

33. The landlord has requested late fees in the full amount of \$75.00.

Analysis

34. 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.

35. 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.

36. As the tenants have been arrears since at least 2 November 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Issue 4: Security Deposit Relevant Submissions

37. Evidence of a \$400.00 security deposit having been collected was provided by the landlord in the rental agreement (L#3) and the rental ledger (L#4). Tenant2 testified that she had no claim on the security deposit.

Analysis

38. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(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.

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

39. Where the landlord's claim for compensation has succeeded in an amount that exceeds the value of the security deposit collected, he is entitled to retain the full amount of the security deposit for use against monies owing.

Decision

40. The landlord's application to retain the tenants' security deposit succeeds in the amount of \$400.00.

Summary of Decision

41. The landlord is entitled to the following:

- To retain the full amount of the \$400.00 security deposit collected.
- A payment of \$4,494.780, determined as follows:
 - a) Rent Owing..... \$3,972.30
 - b) Payment of Utilities.....\$847.48
 - c) Late Fees.....\$75.00
 - d) Less security deposit.....(\$400.00)
 - e) Total.....\$4,494.78
- A payment of a daily rate of rent in the amount of \$26.30, beginning 22 July 2022 and continuing to the date the landlord obtains possession of the rental unit.
- Tenant1 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.

22 July 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal