

Residential Tenancies Tribunal

Application 2022 No. 0561 NL

Decision 22-0561-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:15 AM on 09 August 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 "the tenant", participated in the hearing.
4. An affidavit of service was provided confirming that the tenant was served in person of the claim against him (L#1). The tenant confirmed service.
5. The details of the claim were presented as a month-to month agreement since 01 June 2021 with rent set at \$900 per month for the house and \$500.00 for the garage at the rental premises. No security deposit was collected. The landlord testified that the rental agreement was verbal and that he created the written agreement submitted for the purpose of the tribunal (L#2).
6. 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

7. The landlord is seeking the following:
 - Payment of rent in the amount of \$11,417.34;
 - Payment of utilities in the amount of \$589.09;
 - Payment of late fees in the amount of \$75.00; and
 - Vacant possession of the rental premises.

Legislation and Policy

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

Preliminary Matters

10. The landlord and tenant disagreed about the rate of monthly rent for the house located at [REDACTED]. The landlord testified that the monthly rate of rent was \$900.00, similar to what the monthly rate of rent had been for the tenant when he previously resided at a separate rental location. The tenant testified that the monthly rate of rent for the house was \$700.00 and that this was the same rate of rent for his previous rental. The landlord and tenant agreed that the monthly rate of rent for the garage at the rental premises was \$500.00 a month.
11. The landlord amended the amount of rent owing up to include an additional ½ month rent for August (+\$700) for a total of \$12,117.34. The landlord also increased the amount of utilities owing to \$902.09.

Issue 1: Payment of Rent (\$12,117.34)

Landlord's Position

12. The landlord submitted a copy of his rent ledger (L#3) and testified that a partial payment of rent in the amount of \$629.46 is received every month from the province on the tenant's behalf. The landlord testified that he agreed to allow the tenant to occupy this rental premises because having access to the larger house and garage was to enable him to make more money and that this extra money was to be paid to the landlord for rent. The landlord testified that the tenant owes him \$12,117.34 in rent and that these arrears have been accumulating since the tenant moved into the rental premises on 01 June 2021.
13. In response to claims from the tenant that monthly rent for the house portion of the rental was \$900.00 and not \$700.00, the landlord testified that he had

provided a written summary of debts for the tenant in June 2021 where he specified that monthly rent for the rental premises was \$1,400.00 and that the tenant had signed this.

14. The landlord testified that he should have submitted this document. The landlord also testified that he is out of pocket about \$3000.00 for money that he loaned to the tenant but that he recognizes this was a decision he made and that he cannot seek compensation for these other monies.

Tenant's Position

15. The tenant testified that monthly rent was \$700.00 for accessing the house and \$500.00 for accessing the garage. He also testified that he has "court action" against the landlord and that he is unable to speak without fear of hurting his case. The tenant testified that the landlord falsified his signature on the copy of the written rental agreement provided.
16. When asked why he has not been paying full rent (be it \$700 or \$900) as required, the tenant provided many reasons for why he has not been paying the difference in rent (e.g., the remainder after the government subsidy). He testified that he has not paid rent because:
 - He has been trying to get his small engine repair and mobile RV repair business going;
 - The landlord is blocking access;
 - The landlord did not put new siding on the garage;
 - The floor in the garage is falling in;
 - The house makes him sick;
 - He cannot use the garage as intended but that he can use the house.
17. The tenant testified that he has not made an application to this tribunal for either a refund of rent or a request for repairs from the landlord.

Analysis:

18. I accept the landlord's claim and tenant2's acknowledgement that there are significant rental arrears. Regarding their dispute on monthly rent for accessing the house portion of the rental premises, I was not convinced by the tenant's claim that monthly rent for the house was to be \$700 a month. Additionally, the landlord provided no reason to doubt that monthly rent for the house was \$900 and an additional \$500 for accessing the garage. As such, I accept that monthly rent was \$1,400.00 and that arrears have been accumulating since the start of the tenancy because the government only provides a partial subsidy for the tenant and the tenant has not been paying the difference in rent.
19. 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 (09 August 2022) and a per diem thereafter until the key is returned.

20. A review of the rent ledger submitted, and the table provided below indicates that the landlord was owed \$8,812.12 as at 31 July 2022.

	Rent	Payment
June	\$1,400.00	\$629.38
July	\$1,400.00	\$629.38
August	\$1,400.00	\$629.38
Sept	\$1,400.00	\$944.11
Oct	\$1,400.00	\$314.73
Nov	\$1,400.00	\$629.46
Dec	\$1,400.00	\$629.46
January	\$1,400.00	\$629.46
February	\$1,400.00	\$629.46
March	\$1,400.00	\$629.46
April	\$1,400.00	\$629.46
May	\$1,400.00	\$629.46
June	\$1,400.00	\$629.46
July	<u>\$1,400.00</u>	<u>\$629.46</u>
	\$19,600.00	-
		\$8,812.12
Owing =		\$10,787.88

21. Regarding the landlord's total entitlement to rent to the day of the hearing, I calculate that he is owed \$11,202.15 to the date of the hearing and a per diem of \$46.03 for each day that the tenant retains possession of the rental unit from 10 August 2022 onwards. These amounts were arrived at through the following calculations:

$$\begin{aligned} \$1400.00 \times 12 &= \$16,800.00 / 365 = \$46.03 \text{ per day} \\ \$46.03 \times 9 &= \$414.27 \text{ for August 1 - 9, 2022} \\ \$414.27 + \$10,787.88 &= \$11,202.15 \end{aligned}$$

Decision

22. The landlord's claim for rent succeeds in the amount of \$11,202.15.

Issue 2: Payment of Utilities (\$902.09)

Landlord's Position

23. The landlord testified that the tenant said he would move out at the end of May 2022 and that as part of this, he removed his name from the account with Newfoundland Power. Consequently, the landlord was billed \$65.16 on 10 June 2022 for power at the rental premises and provided this invoice (L#4). The landlord also testified that he has since been charged \$152.96 for July 2022 and that he estimates being charged \$160.00 for August 2022. The landlord stated

that he understands this amount for August could be higher or lower and that he recognizes that the amount charged could be higher or lower. The landlord testified that he tried to have the tenant put his name back on the account with Newfoundland Power, but that he was not successful.

24. The landlord also claimed costs for oil delivery at the rental premises, in the amount of \$249.99 for June 2021 and \$273.94 for October 2021. Copies of invoices for both charges were provided in the total amount of \$523.93 (L#5). The landlord testified that he arranged for the delivery of this oil because the tenant was short on funds at the time and promised to pay him back. The landlord testified that he also paid because he was worried about the tenant using wood fired heat which was contrary to the landlord's insurance.

Tenant's Position

25. The tenant did not provide any specific comment or testimony related to the landlord's claim for compensation for utilities.

Analysis

26. Regarding the landlord's claim for compensation for power bills, I find that the landlord successfully established that he is owed \$218.12 for power bills received to date for the rental premises as a result of the tenant removing his name from the account. Where the landlord has estimated that the power bill for August may be \$160.00, but does not currently have the invoice, I find that this amount is potentially high. As such, I will award an additional \$100.00 for compensation for power consumed by the tenant during July and August 2022. This means that the landlord's total compensation for power, is \$318.12 (e.g., \$218.12 + \$100).
27. Regarding the landlord's claim for compensation for oil bills, I find that these also succeed as submitted because convincing testimony was provided in addition to receipts for costs incurred. Additionally, I note that the tenant did not dispute these charges.
28. The landlord's claim for compensation for utilities succeeds in the amount of \$842.05 (e.g., \$523.93 + \$318.12).

Issue # 3 - Late Fees (\$75.00)

Relevant Submission

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

Analysis

30. 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.

31. 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.*

32. As the tenant has been arrears since at least 02 June 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Issue 4: Order of Vacant Possession

Landlord's Position

33. The landlord submitted a copy of a termination notice issued on 18 June with an effective date of 01 July 2022 with their application (L#6). The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*. The landlord testified that the termination notice was served to the rental premises and left in the door.
34. According to the landlord's records, the tenant owed \$10,017.34 in rent on the day the termination notice was issued. The landlord testified that he issued this notice of termination because he had been working to secure a smaller rental premises for the tenant to occupy, but the tenant informed him that he would be moving elsewhere on 30 May 2022. Then on 01 June 2022, the landlord testified that he had a cleaner arranged to clean the rental premises but found out that the tenant was still residing in the rental premises and that he intended to stay the full month of June because "rent was paid".
35. The landlord is seeking an order for vacant possession of the rented premises because significant arrears remain on the tenant's account and though regular monthly payments continue to come in from the province, these payments of

\$629.46 do not account for either the full amount of rent (e.g., \$1400.00) or utility costs.

Tenant's Position

36. The tenant testified that he did not recall receiving the termination notice in June 2022. He also testified that he does not want to live in the rental premises and that it is difficult trying to find alternative accommodations for himself.

Analysis

37. 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.

38. According to the landlord's records, on 18 June 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$10,017.34. I was not convinced by the tenant's testimony that he "did not receive" the notice because according to 35(2)(c) of the Act, service of the termination notice by posting it to the door (e.g., a "conspicuous place") is considered good service.
39. 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

40. The landlords' claim for an order for vacant possession of the rented premises succeeds.
41. 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

42. The landlord claimed \$20.00 for the expense of applying for the hearing.
43. As his claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

44. The landlord is entitled to the following:
 - A payment of \$12,139.20, determined as follows:

a)	Rent Owing.....	\$11,202.15
b)	Utilities.....	\$842.05
c)	Late Fees.....	\$75.00
d)	Hearing Expenses.....	\$20.00
e)	Total.....	<u>\$12,139.20</u>
 - A payment of a daily rate of rent in the amount of \$46.03 per day beginning 10 August 2022 and continuing to the date the landlord obtains possession of the rental unit.
 - Payment from the tenant for any expenses 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.
 - An order for vacant possession of the rental unit.

11 August 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal