

Residential Tenancies Tribunal

Applications 2022 No. 0835 NL
2022 No. 0896 NL

Decision 22-0835-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:04AM on 1 December 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and "landlord2", participated in the hearing.
4. An affidavit of service was provided by the tenant (T#1) confirming that landlord1 was served notice of the claim on 03 October 2022. Proof of service was provided and landlord1 confirmed service. The landlords submitted their own affidavit of service, confirming that landlord1 served the tenant electronically on 16 November 2022 (L#1). Proof of service was provided (L# 2) and the tenant confirmed service.
5. The details of the claim were presented as a month-to-month agreement that started on 01 January 2022 (L#3). Monthly rent was set at \$800.00, POU and paid every two weeks from March 2022 onwards. A security deposit in the amount of \$600.00 was collected.
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 tenant is seeking the full return of the \$600.00 security deposit.
8. The landlords are seeking the following:
 - Payment of rent in the amount of \$800.00;
 - Payment of late fees in the amount of \$75.00;
 - Payment of utilities in the amount of \$100.00; AND
 - An order for the security deposit to be retained in the amount of \$600.00.

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* (the *Act*).
10. Also relevant and considered in this case are sections 14, 15 and 19 of the *Act*.

Preliminary Matters

11. The rental premises is located at [REDACTED]. The tenant resided in unit A. The tenant was issued a section 19 Termination Notice on 12 August 2022 for non-payment of rent (L#4). Rent was then paid in full on that day, and the tenant was later issued a section 18 notice (see page 14 in L# 5) on 30 August 2022 with a stated move out date of 30 November 2022.
12. The tenant vacated the rental unit on 06 September 2022.

Issue 1: Payment of Rent (\$800.00)

Landlords' Position

13. Landlord1 submitted a copy of her rent ledger for payments received during the tenancy and testified that she is seeking payment of rent in the full amount of \$800.00 for September 2022 because the tenant vacated without providing 30 days notice. Landlord2 testified that the rental premises was re-rented for 01 October 2022 and that time was required between 07 September 2022 and October for the unit to be listed, for applicants to be reviewed, and for the successful tenant to give notice to their previous residence. Landlord2 testified that the rental unit was fully renovated prior to it being rented to the tenant in January of 2022.

Tenant's Position

14. The tenant testified that she "held" rent in August 2022 because she wanted the landlords to respond to her concerns. She stated that she promptly paid rent once she was issued the section 19 Termination Notice. The tenant testified that

she vacated the rental premises on 06 September 2022 because the landlords wanted her out. She stated that she did not know she had to give notice, after she was given notice. The tenant also testified that the rental market in [REDACTED] [REDACTED] is really tight and so she had to jump on the new rental unit that was available to her. The tenant expressed multiple concerns with the state of the rental unit prior to vacating but did not provide any documentary evidence to support her concerns.

Analysis

15. The landlords, as the applicant in this case for payment of rent in the amount of \$800.00, were required to establish on the balance of probabilities that they are entitled to be paid in the amount claimed. Where the tenant had a month-to-month agreement, I find that the landlords are correct in their expectation that the tenant provide a 30 day notice after being provided a 3 month notice to vacate under section 18 of the Act. This is because the landlords had served notice that the rental agreement would be terminating on 30 November 2022 and the tenant independently vacated on 06 September 2022.
16. Consequently, I accept the landlords' claim for compensation for rent in the amount of \$800.00 for the month of September 2022 because replacement tenants were secured from October 2022 onwards.

Decision

17. The landlord's claim for rent succeeds in the amount of \$800.00.

Issue 2: Payment of Late Fees (\$75.00)

Landlords' Position

18. The landlords assessed late fees in the amount of \$75.00 because they have not received payment for rent for September 2022.

Tenant's Position

19. The tenant disputed this claim.

Analysis

20. 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.

21. 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.*

22. As stated in paragraph 17, I found that the landlords are entitled to payment of rent for September 2022. Because the hearing for this disputed occurred in 01 December 2022 and rent is still outstanding, I find that the landlords are entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

23. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 3: Payment of Utilities (\$100.00)

Landlords' Position

24. Landlord1 testified that she received notice from NL Power that the tenant's account for the rental unit would be closed effective 03 September 2022 (see page 21 in L#5). Landlord1 explained that she is seeking compensation for utilities paid, that should have been paid by the tenant for the month of September 2022. Landlord1 referred to a bill from NL Power dated 12 September 2022 in the amount of 18.88 as well as a bill dated 12 October 2022 in the amount of \$58.89. Landlord1 testified that she did not know how to calculate out only the portion owing for September 2022.

Tenant's Position

25. The tenant testified that she has paid for all power used while she retained possession of the rental unit.

Analysis

26. Utilities were the responsibility of the tenant, and the tenant did not pay for utilities for the full month of September. Consequently, I find that the landlords are entitled to compensation for rental unit specific utility charges paid in the tenant's absence. I specifically find that the landlords successfully established that the 12 September 2022 in the amount of \$18.88 should have been paid by the tenant. Regarding the 12 October 2022 bill from NL power, I find that the tenant is likewise responsible for the first 18 days of the amount invoiced and is therefore required to pay the landlords a prorated amount of \$35.93 (e.g., \$59.89 / 30 = \$1.996 x 18 = \$35.93)

Decision

27. The landlord's claim for compensation for utilities succeeds in the amount of \$54.81 (e.g., \$18.88 + \$35.93 = \$54.81).

Issue 4: Security Deposit (\$600.00)

Relevant Submissions

28. The tenant would like their security deposit returned in the full amount of \$600.00 and the landlords have applied for an order to retain the security deposit in the full amount of \$600.00.

Analysis

29. 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.

30. Where the landlords' claim for payment of rent, late fees, and utilities has succeeded in excess of the value of the security deposit, I find that the landlords are entitled to retain the full amount claimed.

Decision

31. The landlords shall retain the full value of the \$600.00 security deposit.

Issue 5: Hearing Expenses

32. The landlords have claimed the \$20.00 expense of applying for a hearing. As their claim has been successful, the tenant shall pay this expense.

Summary of Decision

33. The landlord is entitled to retain the full value of the \$600.00 security deposit collected.

34. The tenant shall pay to the landlords the amount of \$349.81, determined as follows:

a) Rent.....	\$800.00
b) Late Fees.....	\$75.00
c) Utilities.....	\$54.81
d) Hearing Expenses.....	\$20.00
e) LESS Security Deposit.....	\$600.00
f) Total.....	<u>\$349.81</u>

01 December 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal