

Residential Tenancies Tribunal

Application 2022 No. 1045NL

Decision 22-1045-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:02 PM on 17 January 2023 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1425.00,
 - An order for a payment of late fees in the amount of \$61.00,
 - An order for a payment of utilities in the amount of \$98.64,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the security deposit of \$687.50.

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 are sections 15, 19 and 42 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. With her application, landlord1 submitted an affidavit stating that tenant had been served with the claim and notice of hearing, by registered mail, on 06 December 2022. Although the associated tracking history shows that the tenant never did collect that registered letter, section 42.(6) of the *Residential Tenancies Act, 2018* states that an application sent by registered mail is considered to have been served on the 5th day after mailing—so, in this case, 11 December 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. Landlord1 amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$4275.00, and she also stated that she was now seeking the maximum late fee of \$75.00.

Issue 1: Rent - \$4275.00

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term lease with [REDACTED], commencing 01 September 2021, and that lease was renewed for another year on 01 September 2022. On 01 November 2022, that lease was assigned to the tenant and a copy of a Leaseholder Addendum Agreement was submitted with the landlord's application.
9. The agreed monthly rent was set at \$1425.00 per month, and the tenant paid a security deposit of \$687.50.
10. With her application, the landlord submitted a copy of her rent records showing the payments the tenant had made since the lease was assigned to him, and landlord1 pointed out that no rent has been paid for the months of November 2022, December 2022 or January 2023.
11. The landlord is seeking an order for a payment of \$4275.00 in rent for those 3 months.

Analysis

12. I accept landlord1's claim that the tenant has paid no rent to the landlord since he took over the lease on 01 November 2022. As the monthly rent is set at \$1425.00, I agree with the landlord that the tenant owes her \$4275.00 (\$1425.00 x 3 months).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$4275.00.

Issue 2: Late Fees - \$75.00

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

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 arrears since 02 November 2022, 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 succeeds in the amount of \$75.00.

Issue 3: Utilities - \$98.64

Relevant Submissions

18. Landlord1 stated that the tenant was required to pay for his own utilities, and as of 01 November 2022 he was required to have an electrical account set up with Newfoundland Power. However, landlord1 stated that the tenant never did set up an account with Newfoundland Power, and the charges for the electricity consumed by the tenant since he took over the lease continued to be billed to the landlord.
19. With her application, the landlord submitted a bill from Newfoundland Power showing that she was charged \$54.00 for the period from 26 September to 26 October 2022, and an additional \$44.64 for the period from 26 October to 25 November 2022. The landlord is seeking an order for a total payment of utilities in the amount of \$98.64.

Analysis

20. I accept the landlord's claim that the tenant was required to pay his own electrical utilities and that he had failed to set up an account with Newfoundland Power.
21. Given that the lease was only assigned to the tenant on 01 November 2022, I find that the tenant is not responsible for the charges on the first bill, where the billing cycle ended on 26 October 2022. Given that the second bill also includes the last 5 days of October 2022, I find that he is only responsible for \$37.20 of that amount ($\$44.64 \times 25/30$).

Decision

22. The landlord's claim for a payment of utilities succeeds in the amount of \$37.20.

Issue 4: Vacant Possession of Rented Premises

Relevant Submissions

23. With her application, the landlord submitted a copy of a termination notice which landlord1 stated was posted to the tenant's door on 17 November 2022. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 27 November 2022.
24. Landlord1 stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises.

Analysis

25. 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.

26. On 17 November 2022, the day the notice was issued, the tenant was in arrears in the amount of \$1425.00, and he had been in arrears since the beginning of that month.
27. Although the landlord was in a position to issue the tenant a termination notice under this section of the Act on that date, as he had been in arrears for a period longer than 5 days, I find that the notice she had issued to him is not valid. A termination notice issued under this section of the Act must specify a termination date that is “not less than 10 days after the notice” was served on the tenant. As the words “not less than” are used here, these 10 days are considered to be “clear” days, meaning that in counting these days one does not count the day the notice was issued or the day the tenant is required to vacate. On 17 November 2022, the earliest the landlord could have terminated this tenancy would have been 28 November 2022, not 27 November 2022 as indicated on the landlord’s notice.

Decision

28. The termination notice issued to the tenant on 17 November 2022 is not a valid notice.
29. The landlord’s claim for an order for vacant possession of the rented premises does not succeed.

Issue 5: Hearing Expenses

30. The landlord submitted a hearing expense claim form with her application, and receipts showing that she had paid \$20.00 to file this application, and \$13.44 to serve the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

31. The landlord is entitled to an order for a payment of \$4420.64, determined as follows:

a) Rent Owing	\$4275.00
b) Late Fees	\$75.00
c) Utilities	\$37.20
d) Hearing Expenses.....	\$33.44
e) Total.....	<u>\$4420.64</u>

32. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

18 January 2023

Date

John R. Cook
Residential Tenancies Tribunal