

Residential Tenancies Tribunal

Application 2022 No. 1104NL

Decision 22-1104-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 07 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. 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 that repairs be carried out;
 - An order for vacant possession of the rented premises;
 - An order for a payment of rent in the amount of \$4379.00;
 - An order for a payment of late fees in the amount of \$179.00;
 - An order for a payment of utilities in the amount of \$588.00, and
 - Authorization to retain the \$700.00 security deposit.

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 sections 15, 19 and 22 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. 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 sent the application and notice of the hearing to the tenant, by e-mail, on 12 February 2023, 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 no longer seeking an order for vacant possession as the tenant moved out on 25 January 2023. He also stated that he was now seeking \$1282.51 in utilities, and \$5340.00 in rent. Additionally, the landlord removed his claim for an order for repairs to be carried out, as the landlord had completed those repairs himself.
8. The tenant had filed a counterclaim to the landlord's application, 2023 No. 109NL, on 29 December 2022, but the landlord testified at the hearing that the tenant had not served him with that application. As the tenant did not attend the hearing and as the landlord had not been served with that application, it was dismissed.

Issue 1: Rent - \$5340.00

Relevant Submissions

9. The landlord stated that he had entered into a monthly rental agreement with the tenant, commencing 01 September 2022, and a copy of that executed agreement was submitted with his application. The agreed rent was set at \$1400.00 per month, and it is acknowledged in the submitted agreement that the tenant had paid a security deposit of \$700.00.
10. On 06 December 2022, the landlord served the tenant a termination notice, and a copy of that notice was submitted with his application. That notice was issued under 2 sections of the *Residential Tenancies Act, 2018*—section 19 (notice where failure to pay rent), and section 22 (notice where tenant's obligations not met). That notice had an effective termination date of 17 December 2022, but the landlord stated that the tenant did not vacate until 25 January 2023, when the electricity was disconnected.

11. With his application, the landlord had submitted a copy of his rent records showing the payments he had received from the tenant since she moved in. According to these records, the tenant had paid her rent for September 2022, but, according to that ledger, no payments were made for the months of October, November or December 2022. The landlord stated that since those records were submitted, he has received 1 payment from the tenant, in December 2022, in the amount of \$253.00. He also pointed out that rent for January 2023 needs to be added to the amount owing, and he calculates that the tenant is currently in arrears in the amount of \$5340.00.

Analysis

12. I accept the landlord's claim that the tenant had not paid her rent, as required. Based on his records and testimony, I find that the landlord is entitled to a payment of \$5347.00 (\$1400.00 per month x 4 months, less the payment of \$253.00 was made in December 2022).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$5347.00.

Issue 2: Late Fees - \$179.00

14. The landlord has assessed late fees in the amount of \$179.00.

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 arrears since 02 October 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 – \$1282.51

Relevant Submissions

18. The landlord stated that the tenant was responsible for paying her own electrical utilities during this tenancy, and she was required to have the electricity account switched into her name when she moved into the unit. The landlord testified that the tenant never did have the account switched over, and he was subsequently charged for all of the electricity consumed by her for the duration of her tenancy.
19. At the hearing, the landlord submitted a copy of his latest electricity bill showing that during this tenancy, he was charged a total of \$1282.51 for the period ending 12 January 2023. He is seeking an order for a payment of that amount.

Analysis

20. I accept the landlord's claim that the tenant was responsible for paying for her own electricity during her tenancy, and I note that this arrangement was specified in the submitted rental agreement.
21. I also accept the landlord's claim that the tenant never did have the account switched over, and his evidence shows that, up to 12 January 2023, he was billed \$1282.51. As such, his claim succeeds in that amount.

Decision

22. The landlord's claim for a payment of utilities succeeds in the amount of \$1282.51.

Issue 4: Security Deposit

23. The landlord stated that the tenant had paid a security deposit of \$700.00 on 04 September 2022, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

24. The landlord is entitled to a payment of \$6004.51, determined as follows:

a) Rent Owing	\$5347.00
b) Late Fees	\$75.00
c) Utilities	\$1282.51
d) LESS: Security Deposit.....	(\$700.00)
e) Total Owing to Landlord	<u>\$6004.51</u>

30 March 2023

Date


John R. Cook
Residential Tenancies Tribunal