

Residential Tenancies Tribunal

Applications: 2023 No. 0035 NL

Decision 23-0035-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:23 AM on 13 February 2023 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2" respectively, participated in the hearing.
3. The respondents, [REDACTED] (aka [REDACTED]) and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", did not participate in the hearing and were not represented.
4. Two affidavits of service was provided by the landlords confirming that both tenants were served by email and Xpresspost on 20 January 2023 (L#1). Proof of tracking was provided for Xpresspost confirming that both packages were picked up on the same day. Landlord2 testified that she served to the physical address of [REDACTED] because this was provided by the RCMP as a forwarding address for the tenants. The landlords also provided proof of email service to both tenants via tenant1's email address [REDACTED] as well as with proof of prior email correspondence with tenant1 regarding various rental issues through the same email address (L#3).
5. The details of the claim were presented as a month-to-month rental agreement that started July 2020 and ended on 06 November 2022. Monthly rent was set at \$1,150.00 from July 2022 onwards and a security deposit was not collected. Email correspondence with the landlord's previous property manager was provided as proof of an unsigned written rental agreement between the landlords and tenants (L#4).

6. In a proceeding under the *Residential Tenancies Act, 2018*, 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. The standard of proof, in these proceedings, 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 \$5,200.00;
 - Payment of late fees in the amount of \$75.00;
 - Payment of other in the amount of \$365.79.

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* (the *Act*).
9. Also relevant and considered in this case are sections 15 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The tenants were not present or represented at the hearing and I was unable to reach them by telephone with the provided number: [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. 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.
12. As the tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
13. Landlord1 testified that the tenants were issued a three month section 18 termination notice in May 2022 with a stated move out date 31 August 2022. Landlord2 testified that the local RCMP became involved in September 2022 when she called them for a wellness check on the tenants. Landlord1 testified that he was contacted by the RCMP after the tenants reported him for visiting the tenants in early November 2022 to ask why they had not yet vacated. Landlord1 testified that the tenants officially vacated the rental premises.

Issue 1: Payment of Rent (\$5200.00)

Landlord's Position

14. The rental premises is a two apartment building located at [REDACTED]. The tenants resided in the main floor unit. Landlord2 referred to a rent ledger and testified, that with all the late fees removed from the ledger, total rental arrears are \$5,200.00. Landlord2 referred to the ledger and testified that the tenants have been in arrears since at least September 2020. Landlord1 testified that he would regularly contact the tenants when they were late on rent, and at that they were only ever "a month or two" behind. He testified further, that it was only during the final months of the tenancy, that arrears really accumulated because no rent was paid.

Analysis

15. I accept that the landlords are owed rent due to the frequently delayed and partial payments received from the tenants over the years. Regarding the landlords' exact entitlement to rent, I had to create the table below to better understand the landlords' claim. Based on this, I find that the landlords are entitled to payment of rent from the tenants in the amount of \$4050.00 as at 31 October 2022.

	Owed	Paid		Owed	Paid
Jul-20	\$1,100.00	\$1,100.00	Sep-21	\$1,100.00	\$1,100.00
Aug-20	\$1,100.00	\$1,100.00	Oct-21	\$1,100.00	\$1,100.00
Sep-20	\$1,100.00	\$0.00	Nov-21	\$1,100.00	\$1,100.00
Oct-20	\$1,100.00	\$550.00	Dec-21	\$1,100.00	\$0.00
Nov-20	\$1,100.00	\$550.00	Jan-22	\$1,100.00	\$2,200.00
Dec-20	\$1,100.00	\$1,100.00	Feb-22	\$1,100.00	\$1,100.00
Jan-21	\$1,100.00	\$1,100.00	Mar-22	\$1,100.00	\$1,100.00
Feb-21	\$1,100.00	\$1,000.00	Apr-22	\$1,100.00	\$575.00
Mar-21	\$1,100.00	\$1,750.00	May-22	\$1,100.00	\$1,075.00
Apr-21	\$1,100.00	\$1,100.00	Jun-22	\$1,100.00	\$450.00
May-21	\$1,100.00	\$1,100.00	Jul-22	\$1,150.00	\$2,300.00
Jun-21	\$1,100.00	\$1,100.00	Aug-22	\$1,150.00	\$550.00
Jul-21	\$1,100.00	\$1,100.00	Sep-22	\$1,150.00	\$550.00
Aug-21	\$1,100.00	\$1,100.00	Oct-22	\$1,150.00	\$0.00
Sub total					
total	\$15,400.00	\$13,750.00	Sub total	\$15,600.00	\$13,200.00
	A	B		C	D
	\$31,000.00	minus	\$26,950.00	equals	<u>\$4,050.00</u>
	A + C		B + D		

16. Regarding the landlords claim for rent for the month of November 2022, I do not accept their argument that they are entitled to payment of rent for the full month of November 2022. This is because the landlords not only testified that they issued the tenants a three month termination notice, but that the landlords also continued to force in person contact with the tenants regarding potential move dates. In particular, I noted the testimony of landlord1, who stated that the tenants called the RCMP on him when he showed up at the premises. I find that the tenants responded appropriately to a landlord who was attempting to independently enforce their own termination notices without first coming to this tribunal with an application for an order of vacation possession.
17. Consequently, I find that the landlords are only entitled to payment of rent for the days of November 2022 that the premises were occupied by the tenants (e.g., until 06 November 2022). As shown in the calculations below, this makes for a payment of \$22.86 in rent for November 2022 and a total entitlement for payment of rent in the amount of \$4,276.86.

$$\begin{aligned} \$1,150.00 \times 12 &= \$13,800.00 / 365 = \$37.81 \\ \$37.81 \times 6 &= \$226.86 \\ \$4050.00 + \$226.86 &= \$4,276.86 \end{aligned}$$

Decision

18. The landlord's claim for rent succeeds in the amount of \$4,276.86.

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

Relevant Submissions

19. The landlords has assessed late fees in the amount of \$75.00 because the tenants have been in arrears since September 2020.

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. I find that the landlords are entitled to a payment of the maximum fee of \$75.00 set by the minister since the tenants have been in arrears since at least September 2020

Decision

23. The landlord's claim for late fees succeed in the amount of \$75.00.

Issue 3: Other \$365.79 Relevant Submissions

24. Landlord2 testified that she is seeking the claimed amount because the tenants took all the light bulbs when they left and they did not leave any keys. This meant that the landlords had to purchase all new light bulbs and change the locks. A written summary of this claim was submitted, however, no supporting receipts or other documentary evidence was provided (L#5).

Analysis

25. I accept the testimony from landlord2 that she incurred unexpected costs after the tenants vacated when she had to replace all the lightbulbs. Because however, no receipts were provided for this expense, no entitlement to compensation can be considered as costs cannot be verified. Regarding the landlords claims for compensation for replacing locks, this is considered a common costs of landlords that cannot be put back against tenants. Consequently, I find that the landlords' claim for compensation for Other does not succeed in any amount.

Decision

26. The landlord's claim for Other does not succeed in any amount.

Issue 5: Hearing Expenses

27. The landlord claimed the \$20.00 expense of applying for this hearing along with \$37.15 for the cost of service by Xpresspost. However, no receipts were provided for the costs of Xpresspost, nor was photographic proof of the Xpressport mail sent provided. Consequently, I am only able to verify the cost of applying for this hearing, and find that the tenants shall pay the landlord's hearing expense of \$20.00.


Summary of Decision

28. The landlords are entitled an order for payment from the tenants in the amount of \$4,376.86 determined as follows:

a) Rent.....	\$4,276.86
b) Late Fees.....	\$75.00
c) Hearing Expenses	\$20.00
d) Total.....	<u>\$4,376.86</u>

27 February 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal