

Residential Tenancies Tribunal

Application 2023-No.0048 -NL Decision 23-0048-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 09-February-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing [REDACTED]. 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. The landlords submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by pre-paid registered mail ([REDACTED]). The mail was sent on 24-January-2023 and in accordance with the *Residential Tenancies Act, 2018*, is considered served after 5 days. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.
5. The landlord amended their application to increase rent from \$2,186.50 to \$2,473.00 to reflect the current amount of rent due. They also included Utilities due \$813.50 and Security deposit applied to monies owed \$425.00.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$2,473.00
 - Utilities \$813.50
 - Security deposit applied against monies owed \$425.00
 - Vacant possession of rental premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$2473.00

Relevant Submissions

9. The landlords submitted a rental agreement (LL#02) with the application. They entered a written term agreement for one year with the tenant beginning 14-April-2021. They are currently in a monthly agreement. The tenant pays \$850.00 a month. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$425.00 before taking occupancy and they are still in possession of the deposit.
10. Landlord1 said that the tenant rented from them for about 16 years. He eventually got married and bought his own house. The tenant had some troubles and lost his marriage and the house. Landlord1 explained that when he needed a place to stay he moved back into the apartment he used to rent. Landlord1 said that the heat and light wasn't part of his rent and that the tenant was expected to pay this on his own. Due to past issues he couldn't get a meter so they decided to put the meter in their name and each month the tenant paid them the cost billed.
11. The landlord's submitted a rent ledger (LL#03) and landlord1 said there were ongoing issues with payments so even though rent was due to be paid on the 1st day of the month. They permitted the tenant to make half the payment on the 1st and the other half on the 15th of each month. Landlord1 said that the tenant paid half the rent on 01-November-2022 and then he didn't receive another payment until 28-December-2022. The December payment was the last rent paid. See ledger below:

Rent ledger
2022-0048-NL

Date	Action	Amount	total
1-Nov-22	rent due	850.00	850.00
1-Nov-22	payment	-425.00	425.00
1-Dec-22	rent due	850.00	1275.00
28-Dec-22	payment	-502.00	773.00
1-Jan-22	rent due	850.00	1623.00
1-Feb-22	daily rate 01 - 09- Feb	251.55	1874.55

Daily rate: 12 months x \$850 = \$10,200

\$10,200 divided by 365 = \$27.95 a day

$\$27.95 \times 9 \text{ days} = \251.55

12. Note: the ledger has been amended to reflect a daily rate up to and including the day of the hearing.
13. The landlords are seeking full compensation for rent owed.

Analysis

14. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent \$1,874.55.
15. The tenant shall pay the landlord the rent owed totaling \$1,874.55.

Decision

16. The landlord's claim for rent succeeds in the amount of \$1,874.55.

Issue 2: Utilities \$813.50

Relevant Submissions

17. Landlord1 said that they decided to put the heat and light in their name (paragraph 10) because of their past history with the tenant. He said that there were no issues with the payments until October 2022. He confirmed that the tenant made the payment for his utilities in September 2022.
18. The landlord provided a ledger of utilities owed (LL#03), he included the exact amount owed for each month up to the present month. Landlord1 contacted NL Power but they couldn't get the amount owed to him for January/February before today's hearing. He estimated the last payment for January/February to be \$250.00. See ledger below:

Time period	Amount
October/November	\$154.15
November/December	187.58
December/January	221.77
January/February	250.00
Total	\$813.50

19. The landlord is seeking full compensation for utilities owed.

Analysis

20. As in paragraph 14, non-payment of utilities is also a violation of the rental agreement. I accept landlord1's testimony and evidence that the tenant did not reimburse him for the cost of the heat and light bill. I do not accept the assessment of the billing for January/February at \$250.00, the billing for the previous month was cheaper and I will therefore award at \$200.00 to ensure that the tenant is not paying in excess of what is owed. I find that the tenant shall pay to the landlords \$763.50.

Decision

21. The landlord's claim for utilities succeeds in the amount of \$763.50.

Issue 3: Security deposit applied against monies owed \$425.00

Relevant Submissions

22. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$425.00 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

23. The landlord's claim for losses has been successful, paragraphs 16 and 21, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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

Decision

24. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$425.00.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

25. The landlord submitted a termination notice (LL#04). It is on a “landlord’s notice to terminate early – cause” form for failure to pay rent. The notice is signed and dated for 16-December-2022, with a termination date of 28-December-2022.
26. Landlord1 said that they taped the notice to the tenant’s door on 16-December-2022.

Analysis

27. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which 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.*

.....

(4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

.....

28. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.
29. The tenant should have vacated the property by 28-December-2022.

Decision

30. The landlord's claim for an order for vacant possession succeeds.
31. The tenant shall vacate the premises immediately.
32. The tenant shall pay to the landlords 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.
33. The tenant shall pay a daily rate for rent beginning 10-February-2023 of \$27.95, as per paragraph 11, until such time as the landlords regain possession of the property.

Summary of Decision

34. The tenant shall:
 - Pay the landlords \$2,213.05 as follows:
 - Rent \$1,874.55
 - Utilities 763.50
 - Security deposit applied (425.00)
 - Total \$2,213.05
 - Pay a daily rate of rent beginning 10-February-2023 of \$27.95, until such time as the landlords regain possession of the property.
 - Vacate the property immediately
 - Pay to the landlords 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.

The landlord

- Will be awarded an Order of Possession.
- Shall retain the security deposit of \$425.00

February 17, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office