

Residential Tenancies Tribunal

Applications: 2023 No. 0145 NL

Decision 23-0145-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 14 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”, did not participate in the hearing.
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by email on 03 March 2023 and proof of service to [REDACTED] and [REDACTED] was provided (L#2). The landlord also provided previous email correspondence with the tenant from the [REDACTED] as proof of his justification for serving notice of his claim through this address (L#3).
4. The details of the claim were presented as an originally fixed term rental agreement that started 01 January 2022 for which a written rental agreement was provided (L#4). The tenancy then became month to month before the tenant gave notice on 20 February 2023 that she had vacated (L#3). Monthly rent of \$1,150.00 was due “one day before the first of the month” and utilities were charged separately by the landlord. A security deposit in the amount of \$862.50 was collected.
5. 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. 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

6. The landlord is seeking the following:
- Validity of termination notice determined;
 - An order for vacant possession of the rental premises.
 - An order for rent to be paid in the amount of \$2,300.00;
 - An order for utilities to be paid in the amount of \$328.75; and
 - An order to retain the \$862.50 security deposit against monies owed.

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* (the *Act*).
8. Also relevant and considered in this case is section 14 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. 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.
11. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
12. The landlord amended his application at the hearing to remove the claim for vacant possession and validity of termination notice determined. He testified that he received email notification on 20 February 2023 that she had vacated the premises. The landlord also amended his claim for payment of utilities to increase it to a total claim of \$495.24 for utilities charged but not paid for January and February 2023.

Issue 1: Payment of Rent (\$2,300.00)

Relevant Submissions

13. The rental premises a two unit apartment located at [REDACTED]. The tenant resided in Unit A. The landlord submitted a copy of current

rental ledger (L#5) and testified that the tenant owes \$2,300.00 in rent because payment was not received for February 2023 and the landlord was not able to rent the premises for March 2023 because he had to do some repairs. The landlord testified that he posted a notice of abandonment to the door of the rental premises after he returned to town on 28 February 2023 and that he took back possession of the premises the following day.

14. The landlord referred to a section 19 Termination Notice issued on 15 February 2023 with a stated move out date of 26 February 2023. A copy of this termination notice was submitted (L#6).

Analysis

15. I accept the landlord's testimony and evidence that rent was not paid in February 2023 and that he issued a termination notice on 15 February 2023. I further acknowledge, as noted in paragraph four, that the tenant provided notice on 20 February 2023 that she vacated the rental premises. Because the landlord issued the tenant with a termination notice, requesting her to vacate, I find that she is only liable for rent to the day that she provided notice that she vacated (e.g., 20 February 2023). As shown in the calculations below, I therefore find that the tenant owes the landlord \$756.20 for rent.

$\$1,150.00 \times 12 = \$13,800.00 / 365 = \$37.81$ for rent owed each day
 $\$37.81 \times 20 = \756.20 for rent owing February 2023.

Decision

16. The landlord's claim for rent succeeds in the amount of \$756.20.

Issue 2: Payment of Utilities (\$495.24)

Relevant Submissions

17. The testified that he incurs charges for hydro and oil at the rental premises and then bills the tenants monthly. Because the unit occupied by the tenant is smaller than the other unit, the landlord testified that the tenant was charged 35% of total utility charges each month. This information is also contained in the rental agreement. The landlord referred to his supporting documentation for a proportionate charge for utilities in the amount of \$328.75 for January 2023 (L#7).
18. Regarding the landlord's charge for an additional \$166.49, I note that the supporting invoice he submitted was dated 26 January 2023 (L#8) and accounted for in his previously considered invoice for \$328.75.

Analysis

19. I accept the landlord's testimony and evidence to support his claim for payment of utilities in the initially claimed amount of \$328.75. Because the landlord failed to provide supporting information regarding invoices charged for February 2023 and also failed to specify the exact level of the oil tank at the premises when the tenant first took occupancy, I find that the landlord is only entitled to compensation for his original claim. The landlord failed to establish on the balance of probabilities that he was entitled to payment of anything more.

Decision

20. The landlord's claim for payment of utilities succeeds in the amount of \$328.75.

Issue 3: Security Deposit \$862.50

Relevant Submissions

21. The rental agreement (L#4) and the rental ledger (L#5) provide evidence of a \$862.50 security deposit (L#3).

Analysis

22. 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.

23. As the amount owing to the landlord for rent and utilities is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$862.50 security deposit.

Decision

24. The landlord shall retain the full value of the \$862.50 security deposit.

Summary of Decision

25. The landlord is entitled to the following:

- To retain the full value of the \$862.50 security deposit.
- An order for payment from the tenant in the amount of \$222.45 determined as follows:

a) Rent.....	\$756.20
b) Utilities.....	\$328.75
c) LESS Security Deposit.....	(\$862.50)
d) Total.....	<u>\$222.45</u>

21 March 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal