

Residential Tenancies Tribunal

Applications: 2023 No. 0179 NL

Decision 23-0179-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 13 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to "tenant1" and "tenant2", did not participate in the hearing.
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenants were served by email on 02 March 2023. Proof of email service was provided [REDACTED] and [REDACTED] and the landlord testified that she served to the email addresses used to serve her of the tenants original claim application # 2022-1053-NL (L#2).
4. The details of the claim were presented as an originally fixed term rental agreement that started August 2019 for which a copy of the written rental agreement was provided (L#3). Monthly rent was set at \$900.00 POU, due at the first of the month, and a security deposit in the amount of \$450.00 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:
 - An order for rent to be paid in the amount of \$1,800.00;
 - An order for payment of utilities in the amount of \$100.85;

- An order for payment of other in the amount of \$50.00; and
- An order for the \$450.00 security deposit to be applied 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, 15, and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The tenants were not present or represented at the hearing and I was unable to reach them by telephone where I left messages at the numbers provided: [REDACTED] [REDACTED] and [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 tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
12. This application was a counter-claim to one from the tenants (e.g., Application # 2022-1053 NL). Because the tenants did not attend this hearing, their application is dismissed and they will need to refile if they wish to pursue their claims. The landlord made reference to the tenants' application materials where they wrote that the landlord can retain the security deposit for damages (see bottom of page 12 in L#4). Consequently, the security deposit is considered disposed of and will not be considered further.

Issue 1: Payment of Rent (\$1,800.00)

Relevant Submissions

13. The rental premises a single family building located at [REDACTED] [REDACTED]. The landlord testified that she received notice on 02 November 2022 that the tenants would be vacating on 06 November 2022. The landlord claimed \$1800.00 in rent because she testified that she is entitled to payment of rent for November and December 2022. The landlord stated that she received

\$850.00 for rent for November 2022 because tenant1 withheld some money which she frequently did in response to tenant2 allegedly completing some work in the rental premises. She confirmed that she is only seeking rent for December 2022.

Analysis

14. The landlord is responsible for establishing the rate of rent and the tenants' payment history. Where the landlord and tenants had a month-to-month rental agreement, I accept that notice provided of termination provided by the tenants on 02 November 2022, would have only been effective for a rental period ending 31 December 2022. Consequently, I accept that the tenants owe the landlord rent for the month of December 2022 in the amount of \$900.00 as compensation in lieu of notice as required by 18(1)(b) of the Act.

Decision

15. The landlord's claim for rent succeeds in the amount of \$900.00.

Issue 2: Utilities (\$100.85)

Relevant Submissions

16. The landlord claimed utilities in the amount of \$100.99 for the rental premises for the month of November 2022 and provided an invoice (L#5). The landlord testified that she received notice on 04 November 2022 that the tenant had cancelled their account at the premises.

Analysis

17. I accept that the tenants vacated the premises early and that the landlord submitted proof of an invoice for the rental premises in the amount of claimed. Because I found that the tenants owe the landlord rent for December 2022, I accept that they also owed utilities for the premises for that same time period. Consequently, I find that the landlord successfully established on the balance of probabilities that she is entitled to payment for utilities in the amount claimed.

Decision

18. The landlord's claim for payment of utilities succeeds in the amount of \$100.85.

Issue 3: Payment of Other (\$50.00)

Relevant Submissions

19. The landlord referred to a photo submitted of a sizeable pile of debris said to have been left in the yard by the tenants after the vacated (L#6). She testified that she incurred costs of \$50.00 to pay a neighbour with a truck to remove these items. No verifiable proof or other documentation was provided by the landlord to establish that these monies were paid.

Analysis

20. I accept that the landlord stated the tenants left items in the yard after they vacated and that she paid a neighbour to remove this items. Where the landlord did not provide proof of the condition of the yard prior to the occupancy and also did not provide proof of payment in the amount of \$50.00 for removal of these items, I find that her claim does not succeed in the full amount. As however, I accept the landlord as credible and that debris was left behind, I will arbitrarily award compensation for removal of these items in the amount of \$20.00.

Decision

21. The landlord's claim for payment of other succeeds in the amount of \$20.00.

Issue 4: Hearing Expenses

22. The landlord claimed the \$20.00 expense of applying for this hearing. As her claim has been successful, the tenants shall pay this expense.

Summary of Decision

23. The landlord is entitled to the following:

- An order for payment from the tenant in the amount of \$1,040.85 determined as follows:

a) Rent.....	\$900.00
b) Utilities.....	\$100.85
c) Other.....	\$20.00
d) Hearing Expenses	\$20.00
e) Total.....	<u>\$1,040.85</u>

21 March 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal