

Residential Tenancies Tribunal

Application 2023-No.0421-NL

Decision 23-0421-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 14-June-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" 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 her by telephone [REDACTED] at the start of the hearing. 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 as well as proof of service (LL#01) with his application stating that he had served the tenant with notice of the hearing, electronically on 30-May-2023 to the tenant's email [REDACTED]. 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 her absence.
5. The landlord amended his application to increase rent from \$1,160.00 to \$1,360.00 to reflect the current amount of rent due. He also added security deposit applied to monies owed, \$600.00.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,360.00
 - Utilities \$350.00
 - Security deposit applied against monies owed \$600.00
 - Vacant possession of rental premises
 - Hearing Expenses \$20.00

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, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$1,360.00

Relevant Submissions

9. The landlord stated that he and the tenant entered a verbal rental agreement; he provided the written terms of the (LL#02) with the application. The tenant moved in 01-March-2022. They are currently in a monthly agreement. The tenant pays \$1,200.00 a month for rent which doesn't include utilities. 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 \$600.00 on 10-March-2022 and he is still in possession of the deposit.
10. The landlord submitted a rent ledger as follows:

Rent ledger
2023-0421-NL

Date	Action	Amount	total
1-Jan-23	rent due	1200.00	1200.00
3-Jan-23	payment	-1200.00	0.00
31-Jan-23	payment	-1200.00	-1200.00
1-Feb-23	rent due	1200.00	0.00
1-Mar-23	rent due	1200.00	1200.00
27-Mar-23	payment	-1200.00	0.00
1-Apr-23	rent due	1200.00	1200.00
21-Apr-23	payment	-40.00	1160.00
1-May-23	rent due	1200.00	2360.00
19-May-23	payment	-1200.00	1160.00
1-Jun-23	rent daily rate June 01 - 14	552.30	1712.30
2-Jun-23	payment	-1000.00	712.30

Daily rate: \$1,200.00 x 12 months = \$14,400.00
\$14,400.00 divided by 365 days = \$39.45
\$39.45 x 14 days = \$552.30

11. Note: ledger is amended to show a daily rate for June as this tribunal doesn't consider future rent.
12. The landlord is seeking full reimbursement of rent owed.

Analysis

13. 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 totaling \$712.30.
14. The tenant shall pay the landlord the rent owed totaling \$712.30.

Decision

15. The landlord's claim for rent succeeds in the amount of \$712.30.

Issue 2: Utilities \$350.00

Relevant Submissions

16. The landlord stated that when the tenant first moved in she didn't immediately transfer the power bill into her name. As stated in paragraph 9, the tenant moved in 01-March-2023. The power bill was transferred into her name on 29-March-2023.
17. The landlord submitted the billing from Newfoundland Power (LL#03) as follows:
 - 14-February-2023 until 15-March-2023 totaling \$400.56
 - 15-March-2023 until 28-March- 2023 totaling \$175.50
18. The landlord submitted a Utilities ledger (LL#04) estimating \$175.00 each billing for a total of \$350.00.
19. The landlord states that in accordance with the rental agreement the cost of utilities is that of the tenant and he is seeking full compensation for utilities owed.

Analysis

20. Non-payment of utilities is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not change over the billing until 29-March-2023. The breakdown of the billing is as follows:
 - The tenant shall pay the full billing of \$175.50 for the 15 – 28 March invoice
 - A daily rate is calculated for the other billing \$400.56 divided by 29 days = \$13.81 a day x 15 days = \$207.15
21. The tenant therefore should pay \$175.50 + \$207.15 = \$382.65; however the landlord has only applied for \$350.00 and this is the maximum amount that will be awarded.
22. The tenant shall pay the landlord the utilities owed totaling \$350.00.

Decision

23. The landlord's claim for utilities succeeds in the amount of \$350.00.

Issue 3: Security deposit applied against monies owed \$600.00

Relevant Submissions

24. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$600.00 on 10-March-2022 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

25. The landlord's claim for losses has been successful, paragraphs 15 and 23; he 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

26. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$600.00.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

27. The landlord submitted a termination notice (LL#06). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 01-May-2023 with a termination date of 12-May-2023.

28. The landlord provided proof of service of the notice (LL#07). The landlord served the tenant electronically on 01-May-2023 at 1:40 p.m.

Analysis

29. 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.

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30. 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.

31. The tenant should have vacated the property by 12-May-2023.

Decision

32. The landlord's claim for an order for vacant possession succeeds.

33. The tenant shall vacate the premises immediately.

34. 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.

35. The tenant shall pay a daily rate for rent beginning 15-June-2023 of \$39.45, as per paragraph 10, until such time as the landlords regain possession of the property.

Issue 5: Hearing expenses reimbursed \$20.00

36. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#08) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

37. The tenant shall:

- Pay the landlord \$482.30 as follows:
 - Rent \$712.30
 - Utilities 350.00
 - Hearing Expenses 20.00
 - Security deposit applied (600.00)
 - Total \$482.30
- Pay a daily rate of rent beginning 15-June-2023 of \$39.45, 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 \$600.00.

June 20, 2023

Date



Residential Tenancies Office