



## Residential Tenancies Tribunal

Application 2023-No.0561 -NL

Decision 23-0561-00

Jacqueline Williams  
 Adjudicator

### Introduction

1. Hearing was called at 09:16 a.m. on 24-July-2023.
2. The applicant, [REDACTED] (LL#01), hereinafter referred to as "the authorized representative," she 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 he has been properly served. The landlord submitted an affidavit (LL#02) with the application stating that she had served the tenant with notice of the hearing, electronically at 10:29 on 13-July-2023 to the tenant's email [REDACTED]. The tenant's email address is contained in the lease agreement (LL#03). 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 their application to decrease rent from \$2,100.00 to \$1,700.00 to reflect the current amount of rent due.

### Issues before the Tribunal

6. The landlord is seeking:
  - Rent \$1,700.00
  - Utilities \$757.00
  - Security deposit applied against monies owed \$975.00
  - 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, and Section 19: Notice where failure to pay rent.

### Issue 1: Rent \$1,700.00

#### Relevant Submissions

9. The authorized representative submitted a rental agreement (LL#03) with the application. They entered a written term agreement with the tenant from 01-February-2023 until 31-January-2024. The tenant pays \$1,300.00 rent a month. The rental period is from the 1<sup>st</sup> day of the month until the last day; rent is due the 1<sup>st</sup> day of each month. The landlord said that the tenant paid a security deposit of \$975.00 before taking occupancy and the landlord is still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#04) as follows:

Rent ledger 2023-0561-NL				
Date	Action	Amount	total	
1-Feb-23	Rent owed	1300.00	1300.00	
10-Feb-23	Payment	-1300.00	0.00	
1-Mar-23	Rent owed	1300.00	1300.00	
5-Mar-23	Payment	-1100.00	200.00	
12-Mar-23	Payment	-200.00	0.00	
1-Apr-23	Rent owed	1300.00	1300.00	
5-Apr-23	Payment	-700.00	600.00	
13-Apr-23	Payment	-500.00	100.00	
1-May-23	Rent owed	1300.00	1400.00	
10-May-23	Payment	-600.00	800.00	
1-Jun-23	Rent owed	1300.00	2100.00	
13-Jun-23	Payment	-500.00	1600.00	
15-Jun-23	Payment	-1200.00	400.00	
1-Jul-23	daily rate July 01 - 24	1025.76	1425.76	

Daily rate: \$1,300 x 12 months = \$15,600.00

\$15,600.00 divided by 365 = \$42.74 a day

\$42.74 x 24 days = \$1,025.76

11. Note: ledger is amended to show a daily rate for July as this tribunal doesn't consider future rent.
12. The authorized representative states that the landlord is seeking full compensation for rent owed.

### **Analysis**

13. Non-payment of rent is a violation of the rental agreement (LL#03). I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$1,425.76.
14. The tenant shall pay the landlord the rent owed totaling \$1,425.76.

### **Decision**

15. The landlord's claim for rent succeeds in the amount of \$1,425.76.

### **Issue 2: Utilities \$757.00**

#### Relevant Submissions

16. The authorized representative described in the rental agreement (LL#03) part 7, that the tenant is responsible for heat, light and electric. She explains that the tenant has never transferred this billing into her name and the onus has been on the landlord for this billing.
17. She submitted a ledger for utilities (LL#05) due to Newfoundland Power up to the middle of May, as follows:

Date	Billing period	Amount
2/15/23	February	200.00
3/15/23	March	250.00
4/15/23	April	207.00
	Total	657.00

18. The authorized representative states that the landlord is seeking full compensation for utilities owed.

## Analysis

19. Non-payment of utilities is a violation of the rental agreement. The tenant shall pay to the landlord \$657.00 for utilities.

## Decision

20. The landlord's claim for utilities succeeds in the amount of \$657.00.

## Issue 3: Security deposit applied against monies owed \$975.00

### Relevant Submissions

21. The authorized representative stated in paragraph 9 that the tenant paid a security deposit of \$975.00 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

## Analysis

22. The landlord's claim for losses has been successful, paragraphs 15 and 20, 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

23. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of \$975.00.

## Issue 4: Vacant Possession of the Rental Premises

### Relevant Submissions

24. The authorized representative submitted a termination notice (LL#06). It is in letter form and contains the tenant's name and address. It is signed and dated for 31-May-2023 with a termination date of 11-June-2023. It is signed by the property manager who is the

authorized representative. She served the notice to the tenant on the date it is signed, 31-May-2023.

## Analysis

25. 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.***

.....

26. 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.
27. The tenant should have vacated the property by 11-June-23.

## Decision

28. The landlord's claim for an order for vacant possession succeeds.
29. The tenant shall vacate the premises immediately.

30. 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.
31. The tenant shall pay a daily rate for rent beginning 25-July-2023 of \$42.74, as per the table in paragraph 10, until such time as the landlords regain possession of the property.

#### **Issue 5: Hearing expenses reimbursed \$20.00**

32. The authorized representative submitted the receipt for \$20.00 for the cost of the hearing (LL#07) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

#### **Summary of Decision**

33. The tenant shall:
  - Pay the landlord \$1,107.76 as follows:
    - Rent ..... \$1,425.76.
    - Utilities ..... \$657.00
    - Security deposit applied .....(975.00)
      - Total ..... \$1,107.76
  - Pay a daily rate of rent beginning 25-July-2023 of \$42.74, 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 \$975.00.

July 28, 2023

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office