

Residential Tenancies Tribunal

Application 2023-No.0793 -NL

Decision 23-0793-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 20-September-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone ([REDACTED] and [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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents’ absence so long as they have been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenants with notice of the hearing, electronically ([REDACTED]) on 25-August-2023. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. As the tenants have moved, I amended the landlord’s application to include security deposit applied to monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$7,200.00
 - Security deposit applied against monies owed \$400.00
 - Late fees \$75.00
 - Inconvenience \$1,000.00
 - 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 18: Notice of termination of rental agreement.

Issue 1: Rent \$7,200.00

Relevant Submissions

9. The landlord stated that he has a verbal rental agreement with the tenants, beginning mid-September 2023. The landlord explained the tenants lived in another province and they paid half a month's rent and their \$400.00 security deposit, as well as, October's rent at the start of the tenancy. They had a monthly agreement where the tenants paid \$1,200.00 a month 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.
10. The tenants rent the upstairs of a house. Downstairs is another unit. When the downstairs renters were given a termination notice, the tenants asked could they also pay to rent downstairs. The agreement was then amended for \$1,600.00 rent each month for the entire house, due in full on the 1st day of each month. The tenants took over this unit on 01-April-2023. They were expected to change the utility bill for this part of the house into their name, however, they never did. The utilities for the downstairs apartment are being charged to the landlord.
11. The landlord said that the rent was always sporadic and inconsistent. He submitted a rent ledger (LL#02), the ledger doesn't reflect any payments, and the entries only show the \$1,600.00 rent due for each month beginning April 2023 until August 2023.
12. The landlord explained that he also submitted message conversations with the tenants where they discuss rent due (LL#03). The messages list the accumulating amount owed for both rent and utilities; as follows:

Date	amount
27-June-2023	\$2,977.51
01-July-2023 + utilities	\$4,577.51
July 2023 with utilities included	\$4,686.62
01-August + utilities	\$6,286.62

13. The landlord said that \$6,286.62 is the amount due for both utilities and rent up to the end of August. He provided the billing from Newfoundland Power (LL#05), as follows:

Date	amount
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01-April – 03-May	233.80
03-May – 02-June	217.91
02-June – 04 July	109.11
04-July – 02-Aug	92.98

14. The landlord stated that on 03-August-2023 he regained possession of the house after the tenants moved and didn't tell him. As they abandoned the house, and gave no notice, he is seeking August rent in lieu of the notice he didn't receive.
15. The landlord is seeking rent owed.

Analysis

16. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay rent however, his evidence does not clearly differentiate between monies owed for rent and monies owed for utilities. As the landlord did not apply for utilities paid, this additional cost will be removed from the amount owed and not considered as the tenants have not been made aware that the landlord would be seeking reimbursement during this hearing. Only rent owed will be considered, as follows:

Rent ledger 2023-0793-NL Less utilities			
Date	Action	Amount	total
27-Jun-23	starting balance	2977.51	2977.51
27-Jun-23	Less 03 - May utility bill	-233.80	2743.71
27-Jun-23	less 02 - June utility bill	-217.91	2525.80
1-Jul-23	rent	1600.00	4125.80
1-Aug-23	rent	1600.00	5725.80

17. I accept the landlord's testimony that the tenants abandoned the house and didn't give notice. I also accept that although the landlord is required to mitigate his loss, he would not have time to prepare the house for rental and have it rented for the month of August as he only regained possession on 03-August-2023. The tenants are therefore responsible for this loss and had the tenant's given appropriate notice under Section 18 of the Residential Tenancies Act, 2018, they would have been required to give one month's notice to at least the end of August 2023. As per Section 18, of the *Residential Tenancies Act, 2018*, a tenant in a monthly rental can give not less than one month's notice, as follows:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week;*
- (b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and*
- (c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.*

18. The landlord's claim for rent succeeds in the amount of \$5,725.80 and the tenants shall pay the landlord the rent owed.

Decision

19. The landlord's claim for rent succeeds in the amount of \$5,725.80.

Issue 2: Late fees \$75.00

Relevant Submissions

20. The landlord has proven, in the table in paragraph 17, that the tenant has been in rental arrears prior to 27-June-2023 and he is seeking the maximum allowed late fees.

Analysis

21. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

- (a) \$5.00 for the first day the rent is in arrears, and*
- (b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

22. As the tenant has been arrears since before 27-June-2023, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

23. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Security deposit applied against monies owed \$400.00

Relevant Submissions

24. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$400.00 prior to taking occupancy 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 20 and 23, 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

26. There is a discrepancy between the landlord's testimony of a \$400.00 security deposit and the rental ledger amount. The submitted rental ledger (LL#02) lists the security deposit as \$600.00. I will therefore accept the amount documented on the ledger as the accurate reflection of the deposit paid by the tenants.

Decision

27. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of \$600.00.

Issue 4: Inconvenience \$1,000.00

Relevant Submissions

28. The landlord said that the tenants abandoned the house and failed to communicate with him since that time. He provided pictures (LL#04) showing that the tenants had left behind garbage, personal items, old furniture, tires, etc.
29. The landlord stated that it took him 2 - 8 hour days to dispose of everything and clean the house. He is seeking compensation for personal time. He also said that it took 9

truckloads to dispose of everything. He is claiming 2 – 8 hour days at \$85.00 an hour for the use of his truck.

30. He said he did not make application to dispose of the tenants personal belongings because what remained behind was clearly garbage. He said that there were dirty diapers, old bottles, bags of garbage and broken furniture.

Analysis

31. The tenants are required to return the property to the landlord in the same condition as they received the property. It is clear from the pictures submitted into evidence that the property would require that the garbage be removed and the unit cleaned prior to listing the property for rent.
32. I accept that the landlord required two full days to complete this work and find that the tenants shall compensate him at the approved rate of \$22.50 x (2 x 8 hour days)(or 16 hours) = \$360.00.
33. I also accept that the landlord required the use of his truck to remove the garbage. The landlord is seeking \$85.00 an hour for two full days; he did not provide any proof of this cost. I do not agree with the assessment of \$85.00 an hour and as there is no evidence to support this cost assessment, I am left with no alternative but to award an arbitrary amount for the landlord's loss of \$100.00 a day for the two days for \$200.00.
34. I find that the tenants shall compensate the landlord for \$360.00 for personal time and \$200.00 for the use of the truck: totaling \$560.00.

Decision

35. The landlord's claim for inconvenience succeeds in the amount of \$560.00.

Issue 5: Hearing expenses reimbursed \$20.00

36. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

37. The tenants shall:
- Pay the landlord \$5,780.80 as follows:
 - Rent \$5,725.80
 - Late fees 75.00
 - Inconvenience 560.00

- Hearing expenses 20.00
- Security deposit applied (600.00)
 - Total \$5,780.80

The landlord

- Shall retain the security deposit of \$600.00.

September 21, 2023
Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office