

Residential Tenancies Tribunal

[REDACTED] Decision 20-0535-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 25 February 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$2825.00;
 - b. An order for a payment of utilities in the amount of \$305.88;
 - c. Authorization to retain the \$785.00 security deposit; and
 - d. An order for a payment of "other expenses" totalling \$10.29.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone. 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 a 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 affidavits with his application stating that he had served the tenants with notice of the hearing, by e-mail, on 05 January 2021 and a copy of that e-mail was also submitted with his application. The landlord also pointed out that those e-mail addresses were provided to him in the signed rental agreement. The tenants have had 50 days to provide a response. 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.

Issue 1: Rent - \$2825.00

Relevant Submissions

7. The landlord stated that he had entered to a 1-year, fixed-term lease with the tenants commencing 01 September 2019 and a copy of that executed lease was submitted with his application (■ #1). The agreed rent was set at \$1050.00 per month and according to the landlord states that the tenants paid a security deposit of \$785.00.
8. The landlord stated that he did not receive the monthly rent for February 2020 on the 1st day of that month, as per usual, and he contacted them on the following day to inquire about when that rent would be paid. He stated that he received no reply from the tenants and he determined that they had abandoned the unit. He entered and took possession of the property on 14 February 2020.
9. After he regained possession of the unit, the landlord testified that he started to advertise the unit on social media, on Kijiji, and he had also placed an advertisement in the window of the unit. He was able to secure a new tenant for 15 April 2020.
10. The landlord stated that the unit sat vacant during February and March 2020 and he received no rental income during that period. He also testified that he had only received a pro-rated amount of rent for April 2020 from his new tenants in the amount of \$525.00. The landlord is seeking an order for a payment of rent in the amount of \$2625.00 for that period (\$1050.00 + \$1050.00 + \$525.00).
11. The landlord also stated that he was unable to rent the unit for \$1050.00 per month after the tenants moved out and he dropped that rent to \$1000.00 in the hopes of enticing new tenants. Because that rent had been reduced, the landlord stated that he was receiving \$50.00 less in rental income per month during the months of May, June, July and August 2020. As those 4 months make up the last 4 months of the tenants fixed-term lease, the landlord is also seeking compensation for the \$200.00 in lost rental income he suffered for that period.

Analysis

12. I accept the landlord's testimony in this matter and I find that the tenants had abandoned the rented premises at the beginning of February 2020 while they still had 7 months to run on their lease.
13. I also accept the landlord's claim that he mitigated any lost rental income he would have suffered as a result of this abandonment by advertising the unit in several online forums. As the landlord was unable to secure new tenants until 15 April 2020, and only then at a reduced rent of \$1000.00, I find that his claim for a payment of \$2825.00 succeeds. Had the landlord been unable to secure someone else to rent the apartment, the tenants could have been on the hook for \$7350.00.

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2825.00.

Issue 2: Utilities - \$305.88

Relevant Submissions

15. The landlord stated that the tenants were responsible for paying their own utility bills during their tenancy. He stated that after the tenants vacated, the electricity account was placed back into his name and he was charged for the costs of those electrical utilities for the period from the time they cancelled their account to 15 April 2020.
16. With his application the landlord submitted 3 Newfoundland Power bills, covering the period from 03 February through to 15 April 2020 (█ #2). These bills total \$305.88 and the landlord is seeking an order for a payment of that amount.

Analysis

17. For the same reasons set out in section 1, above, I find that as the tenants abandoned the rental unit at the beginning of February 2020, they are responsible for all of their obligations set out in the lease up to 15 April 2020, when the landlord was able to secure new tenants.
18. As the tenants were responsible for paying their own utilities during their tenancy, I find that they are responsible for the electricity charges billed to the landlord up to 15 April 2020. I accept the landlord's evidence that he was charged \$305.88 for that period.

Decision

19. The landlord's claim for a payment of utilities succeeds in the amount of \$305.88.

Issue 3 – Other Expenses: \$10.29

Relevant Submissions

20. The landlord stated that he was charged \$10.29 to post an advertisement on Kijiji in order to secure new tenants after the unit was abandoned in February 2020. He is seeking an order for a payment of that amount. No receipt was submitted with his application.

Analysis

21. Where a landlord incurs costs to mitigate damages caused by a tenant abandoning rented premises, the tenant is responsible for those costs.
22. However, no receipt was submitted by the landlord to establish that he had incurred any costs to advertise his property for rent. As such, that portion of his claim does not succeed.

Decision

23. The landlord's claim for the costs of advertising the unit for rent does not succeed.

Issue 4: Security Deposit

24. The tenants paid a security deposit of \$785.00 in 2 installments, on 12 July 2019 and 01 September 2019. As the landlords' claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

25. The landlord paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, the tenants shall pay this hearing expense.

Summary of Decision

26. The landlord is entitled to the following:

- a) Rent Owing\$2825.00
- b) Utilities\$305.88
- c) Hearing Expenses.....\$20.00
- d) LESS: Security Deposit.....(\$785.00)
- e) Total Owing to Landlords\$2365.88

20 May 2021

Date

John R. Cook
Residential Tenancies Tribunal

