

Residential Tenancies Tribunal

Application 2024-0835-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 2-January-2025.
2. The applicant, [REDACTED], represented by [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 them by telephone 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 the notice of 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 with their application stating that they had served the tenant with the notice of hearing personally at the residential premises on 2-December-2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 his absence.
5. There is a written month-to-month rental agreement which commenced on 1-August-2006. Rent is \$270.00 per month due on the first day of each month and a security deposit was never paid.
6. The application was amended to increase *rent paid* from \$70.00 as per the application to \$95.00 and to include hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for vacant possession of the rented premises.
 - Rent paid \$95.00

- Late fees \$75.00
- Hearing expenses \$20.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 15: Fee for failure to pay rent and Section 19: Notice where failure to pay rent. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*: Section 2-4: deposits, payments and fees and Section 12-1: Recovery of costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submission

10. The landlord submitted a copy of a termination notice given on a *Landlord's Notice to Terminate Early – Cause* form under Section 19: Notice where failure to pay rent. The notice is signed and dated for 29-August-2024, with a termination date of 9-September-2024 (LL#2).

Landlord's Position

11. The landlord's representative testified that rent was in arrears when they gave the termination notice on the 29-August and was still in arrears on the termination date of 9-September. The landlord is seeking vacant possession due to nonpayment of rent.

Analysis

12. Section 19 of the *Residential Tenancies Act, 2018* 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.

13. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 9-September the tenant was still in arrears. I asked the landlord's representative how the termination notice was served, and he responded that it was delivered by the Resident Manager on 29-August. In accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the Act and is a valid notice.

14. I find that the tenant should have vacated the premises on 9-September-2024.

Decision

15. The landlord's claim for an *order for vacant possession of the rented premises* succeeds.

Issue # 2: Rent paid \$95.00

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$95.00 and they submitted a rental ledger to support the claim (LL#3). See copy of rental ledger below:

7/30/2024	7/2024	R-6589169	chk# Online Pmt - [REDACTED] R.	0.00	0.00	0.00	0.00	265.00	-200.00
8/1/2024	8/2024	C-7280493	lotrent - Lot Rent	270.00	0.00	0.00	270.00	0.00	70.00
9/1/2024	9/2024	C-7320896	lotrent - Lot Rent	270.00	0.00	0.00	270.00	0.00	340.00
9/4/2024	9/2024	R-6653224	chk# Online Pmt - [REDACTED] R.	0.00	0.00	0.00	0.00	265.00	75.00
10/1/2024	10/2024	C-7362598	lotrent - Lot Rent	270.00	0.00	0.00	270.00	0.00	345.00
10/2/2024	10/2024	R-6690029	chk# Online Pmt - [REDACTED] R.	0.00	0.00	0.00	0.00	265.00	80.00
11/1/2024	11/2024	C-7406860	lotrent - Lot Rent	270.00	0.00	0.00	270.00	0.00	350.00
11/4/2024	11/2024	R-6730729	chk# Online Pmt - [REDACTED] R.	0.00	0.00	0.00	0.00	265.00	85.00
12/1/2024	12/2024	C-7451816	lotrent - Lot Rent	270.00	0.00	0.00	270.00	0.00	355.00
12/2/2024	12/2024	R-6764910	chk# Online Pmt - [REDACTED] R.	0.00	0.00	0.00	0.00	265.00	90.00
12/30/2024	12/2024	R-6776381	chk# Online Pmt - [REDACTED] R.	0.00	0.00	0.00	0.00	265.00	-175.00
1/1/2025	1/2025	C-7488944	lotrent - Lot Rent	270.00	0.00	0.00	270.00	0.00	95.00

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$95.00 and they are seeking rent to be paid in full.

Analysis

18. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid by a tenant(s) during the use or occupancy of a residential premises. I do not accept the landlord's testimony that rent is currently outstanding. The rental ledger is amended to show a daily rate for January as this tribunal does not consider future rent (see below).

Amended Rental Ledger 2024-0835-NL			
Date	Action	Amount	Total
October 31, 2024	Balance	\$70.00	
Sepember 1, 2024	Rent due	\$270.00	\$340.00
September 4, 2024	Payment	-\$265.00	\$75.00
October 1, 2024	Rent due	\$270.00	\$345.00
October 2, 2024	Payment	-\$265.00	\$80.00
November 1, 2024	Rent due	\$270.00	\$350.00
November 4, 2024	Payment	-\$265.00	\$85.00
December 1, 2024	Rent due	\$270.00	\$355.00
December 2, 2024	Payment	-\$265.00	\$90.00
December 30, 2024	Payment	-\$265.00	-\$175.00
January 1-2, 2025	Rent due	\$17.76	-\$157.24

Daily rate: \$270 x 12 mths = \$3240
\$3240 / 365 days = \$8.88 per day

19. I find that rent is not outstanding as of 2-January-2025, however if the tenant remains in the unit, a daily rate of \$8.88 shall be paid after 19-January-2025 until such time as the landlord regains possession of the property.

Decision

20. The landlord's claim for *rent paid* in the amount of \$95.00 does not succeed.

Issue # 3: Late fees \$75.00

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. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* states:

Late payment fee:

A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.

23. In accordance with Section 15 of the *Act* as stated above, late fees can be charged to a maximum of \$75.00 in any consecutive number of rental periods where rent is in arrears.

The rental ledger shows that rent was in arrears from 29-August when the termination notice was given up to 30-December. I find that the tenant is responsible for the maximum late fee charges of \$75.00.

Decision

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

Issue # 4: Hearing Expenses \$20.00

25. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#4). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees can be claimable costs. As the landlord's claim for losses has been successful, I find that the tenant is responsible for the hearing expenses.

Decision

26. The landlord's claim for *hearing expenses* succeeds in the amount of \$20.00.

Summary of Decision

27. The tenant shall pay a daily rate of rent beginning 20-January-2025 of \$8.88, until such time as the landlord regains possession of the property.

28. The tenant shall pay the landlord \$20.00 for hearing expenses.

29. The tenant shall vacate the property immediately.

30. The tenant shall pay to the landlord 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 landlord will be awarded an Order of Possession.

January 6, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office