

Residential Tenancies Tribunal

Application 2024-0890-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 20 November 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, was not in attendance. [REDACTED], hereinafter referred to as “the landlord’s representative” (L#1), attended.
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. Attempts to contact the tenant by telephone prior to the start of the hearing were unsuccessful. 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 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 her application stating that the tenant with the notice of hearing by electronic mail on 8 November 2024 at 3:55 PM (L#2). The landlord’s representative confirmed the e-mail address of the tenant during the hearing [REDACTED]). 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 fixed term written rental agreement which commenced on 27 March 2024. Prior to occupancy, the agreement between the landlord and tenant was that \$129.03 rent was due for March 2024. Rent is currently \$1000.00 per month, due on the 1st of each month. A security deposit of \$500.00 was

collected on the tenancy on 9 May 2024, and remains in the possession of the landlord.

6. The landlord's representative amended the application to reduce rental arrears for August and September and to include rent and late fees for October and November 2024 and requested hearing expenses.
7. The disposition of the security deposit will be dealt with in this hearing.
8. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

9. The landlord is seeking the following:
 - An Order of Vacant Possession of the rental property
 - Rent and late fees paid in the amount \$2223.03
 - Hearing Expenses in the amount of \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018 (*the Act*).
11. Also relevant and referred to in this decision are Sections 19, 34 and 35 of the *Act*.

Issue 1: Vacant Possession of the Rental Premises

12. The landlord's representative testified the tenant took occupancy of the rental premises on 27 March 2024. Along with the application, the landlord supplied a rental ledger (L#3). The tenant was issued a termination notice under Section 19 of the *Residential Tenancies Act*, 2018, via electronic mail service ([REDACTED]) on 13 September 2024 at 3:24 PM with a request for the tenant to vacate by 25 September 2024 (L#4). The landlord's representative stated the tenant paid the rent owing for August and September but continues to owe rental arrears of \$129.03 from March 2024, and also owes \$2000.00 for October and November 2024. On the date of the hearing (20 November 2024), the tenant remains in the rental premises.

Analysis

13. Section 19, Notice where failure to pay Rent, of the *Residential Tenancies Act, 2018* states:

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.

14. Rent is required to be paid by a tenant for the use or occupancy of a residential premises. The tenant had been in rental arrears in excess of 5 days when the notice was serviced on 13 September 2024 to be out of the rental premises by 25 September 2024. On the date of termination, 25 September 2024, the tenant was still in arrears. 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.
15. The tenant should have vacated the property by 25 September 2024.

Decision

16. The landlord's claim for vacant possession succeeds.

Issue 2: Rent Paid \$2129.03

17. The landlord's representative testified that rent is outstanding in the amount of \$2129.03. The landlord's representative stated since the tenant took occupancy of the rental premises on 27 March 2024, rental arrears have carried forward and this amount

includes 129.03 for March rent, as well as \$1000.00 per month for October and November 2024. In addition to the \$94.00 late fees noted on the application, the landlord's representative stated that the tenant has accumulated a further \$116.00 late fees for the months of October and November. Along with the application, the landlord provided a rental ledger (L#2). In addition to the rental ledger provided, the landlord's representative testified that the tenant has also incurred arrears for November 2024.

18. Late Fees will be addressed herein after rental arrears.

Analysis

19. Non-payment of rent is a violation of the rental agreement. The landlord amended the application as indicated herein and are seeking rental arrears up to 30 November 2024 equaling \$2129.03.
20. The landlord testified the rental arrears included rent owing for March (\$129.03), October (\$1000.00) and November 2024 (\$1000.00).
21. As this tribunal does not include future rent, rent for November 2024 can only be calculated up to and including the day of the hearing (20 November 2024). That calculation is: $\$1000.00 \times 12 \text{ months} = \$12000.00 \div 366 \text{ days} = \$32.79 \text{ per day} \times 20 \text{ days} = \655.80 . Rent owing for November 2024 is \$655.80.
22. The tenant owes rental arrears of \$1784.83.
23. In total, the landlord claims \$210.00 for late fees. The tenant has been in rental arrears since taking occupancy of the rental premises on 27 March 2024. Section 15 of the *Residential Tenancies Act, 2018* offers clear direction regarding fees for failure to pay rent. As noted in section 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*".
24. 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.

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

Decision

26. The landlord claim for rental arrears and late fees succeeds in the amount of \$1859.83.

27. Additionally, the tenant is responsible for a daily rent in the amount of \$32.79 beginning on 21 November 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Issue 3: Hearing Expenses

28. The landlord offered evidence of the application fee of \$20.00 (L#5) and is seeking compensation. As the application succeeds, in accordance with Residential Tenancies Program Policy 12-001, the landlord claim for hearing expenses succeeds.

Decision

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

Issue 4: Security Deposit

30. The tenancy has come to an end and the security deposit must be dealt with. In this case, the security deposit was \$500.00 and paid to the landlord on 9 May 2024. As the landlord's claim for losses has been successful, the security deposit shall be applied against monies owed.
31. S. 14(7) of the *Act* states that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. The regulations prescribe a simple cumulative 1% annual interest rate for 2024. Calculated to the date of the hearing, this results in total interest of \$2.68.

Summary of Decision

29. The landlord is entitled to the following:

- A payment of **\$1377.15**, determined as follows:

a) Rental Arrears and late fees	\$1859.83
b) Hearing Expense.....	\$20.00
c) Less security deposit	(\$ 502.68)
c) Total.....	<u>\$1377.15</u>

- An Order of Vacant Possession of the rented premises.
- A payment of a daily rate in the amount of \$32.79, beginning on 21 November 2024 and continuing to the date the landlord obtains vacant possession of the rental premises.

- The tenant shall also pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the Order of Possession.

04 December 2024
Date



Michael J. Reddy
Residential Tenancies Office