

Residential Tenancies Tribunal

Application 2024-0984-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 13 November 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing.
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 attempts to reach her by telephone 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 his application stating that he had personally served the tenant with the notice of hearing on 23 October 2024 at 7:30 PM (L#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 her absence.
5. There is a verbal month to month rental agreement which commenced on 26 August 2024. Rent is currently \$ 950.00 per month, due on the first of each month. A security deposit of \$400.00 was collected on the tenancy on 20 August 2024, and remains in the possession of the landlord.
6. The landlord amended the application to increase rental arrears to include November 2024. The landlord also requested hearing expenses.

7. 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

8. The landlord is seeking the following:
- An Order of Vacant Possession of the rental property
 - Rent and late fees paid in the amount \$3,050.00
 - Hearing Expenses in the amount of \$20.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018 (the Act)*.
10. 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

11. The landlord testified the tenant took occupancy of the rental premises on 26 August 2024. Along with the application, the landlord supplied a rental ledger (L#2). The landlord testified the tenant has carried rental arrears since August 2024 and on 10 October 2024, the tenant was issued a termination notice under Section 19 of the *Residential Tenancies Act, 2018*, via personal service, with a request for the tenant to vacate by 22 October 2024 (L#3). On the date of the hearing (13 November 2024), the tenant remains in the rental premises.

Analysis

12. 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.

13. 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 10 October 2024 to be out of the rental premises by 22 October 2024. On the date of termination, 22 October 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.
14. The tenant should have vacated the property by 22 October 2024.

Decision

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

Issue 2: Rent Paid \$3,050.00

16. The landlord testified that rent is outstanding in the amount of \$3,050.00. The landlord stated since August 2024, the tenant has always carried rental arrears forward and this amount includes \$150.00 late fees. The landlord stated the verbal agreement between himself and the tenant was she could move in to the rental premises on 26 August 2024 after she pay \$450.00. She paid \$400.00 for August. Along with the application, the landlord provided a rental ledger (L#2) which is partially reproduced in the analysis below. In addition to the rental ledger provided, the landlord testified that the tenant has also incurred arrears for November 2024.
17. Late Fees will be addressed herein after rental arrears.

Analysis

18. 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 \$3,050.00.

19. The rental ledger supplied indicates by 31 October 2024, the tenant owed \$1,950.00. Since that time, the tenant has continued to incur rental arrears. That piece of evidence indicates the following:

Date	Transaction	Amount Due	Payment	Balance
26 Aug 2024	Rent due	\$450.00	\$400.00	\$50.00
1 Sept 2024	Rent due	\$950.00	\$0.00	\$1000.00
1 Oct 2024	Rent due	\$950.00	\$0.00	\$1950.00

20. 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 (13 November 2024). That calculation is: $\$950.00 \times 12 \text{ months} = \$11,400.00 \div 366 \text{ days} = \$31.15 \text{ per day} \times 13 \text{ days} = \404.95 . Rent owing for November 2024 is **\$404.95**.
21. The tenant owes rental arrears of **\$2354.95**.
22. The landlord claims \$150.00 for late fees. The landlord's claim for rental arrears succeeds. The tenant has rental arrears since August 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*".
23. 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.

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

Decision

25. The landlord claim for rental arrears and late fees succeeds in the amount of **\$2,429.95**.
26. Additionally, the tenant is responsible for a daily rent in the amount of **\$31.15** beginning on 14 November 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Issue 3: Hearing Expenses

27. The landlord offered evidence of the application fee (L#4) 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

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

Summary of Decision

29. The landlord is entitled to the following:

- A payment of **\$2,449.95**, determined as follows:

a) Rental Arrears and late fees	\$2,429.95
b) Hearing Expense.....	\$20.00
c) Total.....	<u>\$2,449.95</u>

- An Order of Vacant Possession of the rented premises.
- A payment of a daily rate in the amount of **\$31.15**, beginning on 14 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.

27 November 2024
Date



Michael J. Reddy
Residential Tenancies Office