

Residential Tenancies Tribunal

Application 2024-1037-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 27 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, and I did not have a contact telephone number for him. 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 served the tenant with the notice of hearing by registered mail ([REDACTED]) on 1 November 2024 (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 his absence.
5. There is a verbal month to month rental agreement which commenced in January 2023. Rent is currently \$ 750.00 per month, due at the beginning of the month; however, the landlord testified that the tenant asked to pay the rent bi-weekly, and he agreed. A security deposit of \$375.00 was collected on the tenancy in 2023. The landlord testified that he allowed the tenant to use the security deposit to pay for one-half month’s rent in June 2024.

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 \$1200.00
 - Hearing Expenses in the amount of \$37.92

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 in January 2023. Along with the application, the landlord supplied a rental ledger (L#2). The tenant was issued a termination notice under Section 19 of the *Residential Tenancies Act*, 2018, signed on 17 October 2024 and served by posting it in a conspicuous place, with a request for the tenant to vacate by 28 October 2024 (L#3). On the date of the hearing (27 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 17 October 2024 to be out of the rental premises by 28 October 2024. On the date of termination, 28 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 28 October 2024.

Decision

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

Issue 2: Rent and Late Fees \$1200.00

16. The landlord testified that rent is outstanding in the amount of \$1125.00. The landlord stated since October 2024, the tenant has carried rental arrears forward and this amount includes \$75.00 late fees. The landlord testified that the tenant paid \$375.00 for the month of October 2024 on 15 November 2024. At that time, \$375.00 of rent remained outstanding for October 2024. 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 rental ledger supplied indicates on 1 October 2024, the tenant owed \$750.00. Since that time, the tenant has continued to incur rental arrears. That piece of evidence indicates the following:

Date	Transaction	Amount Due	Payment	Balance
1 Oct 2024	Rent due	\$750.00	\$0.00	\$750.00
15 Nov 2024	Payment		\$375.00	\$375.00

19. The landlord amended the application as indicated herein and are seeking rental arrears for November 2024. 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 (27 November 2024). That calculation is: $\$750.00 \times 12 \text{ months} = \$9000.00 \div 366 \text{ days} = \$24.59 \text{ per day} \times 27 \text{ days} = \663.93 . Rent owing for November 2024 is \$663.93.
20. The tenant owes rental arrears of \$1038.93.
21. The landlord claims \$75.00 for late fees. The tenant has rental arrears since October 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”.
22. 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.

23. As the tenant has been in rental arrears more than 35 days, the landlord’s claim for late fees succeeds in the amount of \$75.00.

Decision

24. The landlord claim for rental arrears and late fees succeeds in the amount of \$1113.93.
25. Additionally, the tenant is responsible for a daily rent in the amount of \$24.59 beginning on 28 November 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Issue 3: Hearing Expenses

26. The landlord offered evidence of the application fee of \$20.00 (L#4) and evidence of the registered mail fee of \$17.92 (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

27. The landlord's claim for hearing expenses succeeds in the amount of \$37.92.

Summary of Decision

28. The landlord is entitled to the following:

- A payment of **\$1151.85**, determined as follows:

a) Rental Arrears and late fees	\$1,113.93
b) Hearing Expense.....	\$37.92
c) Total.....	<u>\$1,151.85</u>

- An Order of Vacant Possession of the rented premises.
- A payment of a daily rate in the amount of **\$24.59**, beginning on 28 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