

Residential Tenancies Tribunal

Application 2022-No.34-NL

Decision 22-0034-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:03 a.m. on 06-April-2022.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.
4. The respondent's daughter, [REDACTED], attended as a support person.

Preliminary Matters

5. The landlords submitted an affidavit (LL#01) saying that, landlord2 served the tenant, personally, on 15-March-2022 of notification of the hearing. The tenant agreed to service.
6. The landlords amended their application to reflect current rent owed from \$2,219.89 to \$4,045.27.

Issues before the Tribunal

7. The landlords are seeking:
 - Rent \$4,045.27
 - Late fees \$75.00
 - Premises vacated
 - 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 18: Notice of termination of rental agreement.

Issue 1: Rent \$4,045.27

Landlords' Position

10. Landlord2 said that the tenant has a verbal rental agreement with the homeowner. The tenant has been living in her apartment since March 2006. The tenant pays \$800.00 a month for rent. Her rental period is from the first day of the month to the last, rent is due the first day of each month.
11. Landlord2 said that the homeowner doesn't believe that the tenant paid a security deposit when she moved in. The homeowner will, however, be crediting her with a security deposit of \$600.00, so that the tenant can use this to find a new apartment.
12. The landlords provided a rent ledger (LL#02) showing that the tenant has been in arrears beginning 02-August-2021 and that she has remained in arrears since that time.

Rent ledger
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Date	Action	Amount	total
1-Aug-21	rent due	800.00	800.00
1-Sep-21	rent due	800.00	1600.00
10-Sep-21	rent paid	-800.00	800.00
1-Oct-21	rent due	800.00	1600.00
4-Oct-21	rent paid	-400.00	1200.00
8-Oct-21	rent paid	-400.00	800.00
1-Nov-21	rent due	800.00	1600.00
5-Nov-21	rent paid	-400.00	1200.00
10-Nov-21	NL Subsidy rent paid	-409.72	790.28
1-Dec-21	rent due	800.00	1590.28
2-Dec-21	NL Subsidy rent paid	-87.61	1502.67
12-Dec-21	NL Subsidy rent paid	-82.78	1419.89
1-Jan-22	rent due	800.00	2219.89
25-Jan-22	NL Subsidy rent paid	-237.39	1982.50
1-Feb-22	rent due	800.00	2782.50
1-Feb-22	NL Subsidy rent paid	-112.41	2670.09
1-Mar-22	rent due	800.00	3470.09
1-Mar-22	NL Subsidy rent paid	-224.82	3245.27

1-Apr-22	rent due daily rate Apr 01- 06	157.80	3403.07
	Daily rate of rent \$800.00 x 12 months = \$9,600.00		
	\$9,600.00 divided by 365 days = \$26.30 per day		
	\$26.30 x 6 days to hearing date = \$157.80		

13. The landlords are seeking full reimbursement of rent owed.
14. The landlords dispute that a staff member collected rent from the tenant on 05-November-2021; but acknowledge that rent was paid on that date.

Tenant's Position

15. The tenant said that she has been living in the apartment a long time and that her husband recently passed away.
16. The tenant said that when she paid rent on 05-November-2021, one of the staff said that this would be the last time collecting rent because she had a termination notice pending.
17. The tenant said she stopped paying rent after 05-November-2021. She had applied for a rent subsidy and she did not request that the subsidy be stopped. The subsidized rent payments are shown in the rent ledger paragraph 12. The tenant does not dispute the rent claim.

Analysis

18. Non-payment of rent is a violation of the verbal rental agreement. The landlords have submitted a rent ledger and landlord2 provided testimony to show rent owed.
19. The rent ledger displayed in paragraph 12, reflects the rent ledger submitted by the landlords (LL#02). The April 2022 rent has been calculated to a daily rent amount; as this board does not consider future rent. The rent for April is shown as \$157.80 for the period of April 01-06. The total amount owing is \$3,403.07
20. I accept the evidence submitted by the landlords, as well as, landlord2's testimony of rent owed. The tenant also acknowledges that she stopped paying rent in November. The tenant shall pay the landlords \$3,403.07 for rent owed.

Decision

21. The landlord's claim for rent succeeds in the amount of \$3,403.07.

Issue 2: Late Fees - \$75.00

Landlords' Position

22. Landlord2 said that the tenant has been in arrears since August 2021 and they are requesting the maximum amount of late fees allowed.

Analysis

23. 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.*

24. As the tenant has been arrears since August 2021, the landlords are entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of the Rental Premises

Landlords' Position

26. The landlords submitted a termination notice (LL#03). It is on a "landlord's notice to terminate standard." The notice is signed and dated for 01-November-2021 with a termination date of 31-January-2022. Landlord2 said that she placed the notice in the tenant's mailbox on 01-November-2021.

Tenant's Position

27. The tenant acknowledges that she received the notice as stated. She said that she has been living in her apartment a long time and she is having trouble finding a new place to live.

Analysis

28. As confirmed by both parties the notice was served under Section 18, of the *Residential Tenancies Act, 2018*, which states:

Notice of termination of rental agreement

18.(2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) *not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*
- (b) ***not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and***
- (c) *not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

....

(9) *In addition to the requirements under section 34, a notice under this section shall*

- (a) *be signed by the person providing the notice;*
- (b) *be given not later than the first day of a rental period;*
- (c) *state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*
- (d) *be served in accordance with section 35.*

29. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.

30. The tenant should have vacated the property by 31-January-2022.

Decision

31. The landlord's claim for an order for vacant possession succeeds.

32. The tenant shall vacate the premises immediately.

33. The tenant shall pay to the landlords 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.

34. The tenant shall pay a daily rate for rent beginning 07-April-2022 of \$26.30, as per paragraph 12, until such time as the landlords regain possession of the property.

Issue 4: Hearing expenses reimbursed \$20.00

35. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#03) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

36. The tenant shall:

- Pay to the landlords \$3,498.07, as follows:
 - Rent\$3,403.07
 - Late fees75.00
 - Hearing expenses20.00
 - Total\$3,498.07
- Pay a daily rate of rent beginning 07-April-2022 of \$26.30, until such time as the landlords regain possession of the property.
- Vacate the property immediately
- Pay to the landlords 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.

The landlord will be awarded an Order of Possession.

April 8, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office