

## Residential Tenancies Tribunal

Application 2022-No.44-NL

Decision 22-0044-00

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 11:15 a.m. on 07-April-2022
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 him 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 notice of the 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 (LL#01) with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail on 28-February-2022 and they provided the tracking number which shows that the package was received on 02-March-2022. 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. The landlord amended the rent due to reflect the current amount due from \$507.00 to \$993.00.

### Issues before the Tribunal

6. The landlord is seeking:
  - Rent \$993.00
  - Late fees \$75.00
  - Vacant Possession of rental premises
  - Hearing expenses reimbursed \$20.00

## Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. 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.

### Issue 1: Rent \$993.00

#### Relevant Submissions

9. The landlord said that the tenant moved in on 01-August-2005 and he had a rental agreement with the previous owners. She said that they took over the apartment building in 2010. They have a written rental agreement with the tenant for a monthly agreement from the 1<sup>st</sup> day of the month to the last, with rent being due on the 1<sup>st</sup> day of each month.
10. The landlord said that the tenant's rent increases each year and he is given six months' notice prior to the increase. Currently the tenant pays \$855.00 a month. The tenant paid a security deposit to the original owner and the current landlords received the deposit of \$255.00 on 16-December-2010. They are still in possession of that deposit.
11. The landlord provided a rent ledger (LL#02) showing that the tenant's rent has been late and that he is in arrears. See below:

Rent ledger 2022-No.44-NL			
29-Oct-21	tenant ends October in surplus position	-368.00	-368.00
1-Nov-21	rent due	845.00	477.00
1-Dec-21	rent due	845.00	1322.00
3-Dec-21	rent paid	-427.00	895.00
7-Dec-21	rent paid	-427.00	468.00
24-Dec-21	NI Subsidy	-408.00	60.00
24-Dec-21	NI Subsidy	-408.00	-348.00
1-Jan-22	rent due	855.00	507.00
28-Jan-22	NI Subsidy	-408.00	99.00
1-Feb-22	rent due	855.00	954.00
9-Feb-22	rent paid	-427.00	527.00
25-Feb-22	NI Subsidy	-408.00	119.00
1-Mar-22	rent due	855.00	974.00
7-Mar-22	rent paid	-428.00	546.00
1-Apr-22	rent due daily rate 01-07 Apr	198.70	744.70
1-Apr-22	NI Subsidy	108.00	852.70

Daily rate \$855.00 x 12 months = \$10,260.00

\$10,260.00 divided by 365 days = \$28.10

7 days rent x \$28.10 = \$198.70

12. The landlord is seeking full reimbursement of rent owed.

### Analysis

13. Non-payment of rent is a violation of the rental agreement. The landlord has submitted a rent ledger and provided testimony to show rent owed.
14. The rent ledger displayed in paragraph 11, reflects the rent ledger submitted by the landlord (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 \$198.70 for the period of April 01-07. The total amount owing is \$852.70.
15. I accept the evidence submitted by the landlord and her testimony of rent owed. The tenant shall pay the landlord \$852.70 for rent owed.

### Decision

16. The landlord's claim for rent succeeds in the amount of \$852.70

### Issue 2: Late Fees - \$75.00

#### Relevant Submissions

17. The landlord said that the tenant has been in arrears since 02-January-2022 and they are requesting the maximum amount of late fees allowed.

### Analysis

18. 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.*

19. As the tenant has been arrears since 02-January-2022, the landlord is entitled to a payment of the maximum fee of \$75.00 as set by the minister.

## Decision

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

## Issue 3: Vacant Possession of the Rental Premises

### Relevant Submissions

21. The landlord submitted a termination notice (LL#03). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 18-January-2022, with a termination date of 29-January-2022.
22. The landlord said that the Resident Manager placed the notice under the tenant's door on 18-January-2022 and then sent her a text, to verify that the notice had been served.

## Analysis

23. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which 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.*

.....

24. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.
25. The tenant should have vacated the property by 29-January-2022.

### **Decision**

26. The landlord's claim for an order for vacant possession succeeds.
27. The tenant shall vacate the premises immediately.
28. 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.
29. The tenant shall pay a daily rate for rent, beginning 08-April-2022 of \$28.10, as per paragraph 11, until such time as the landlords regain possession of the property.

### **Issue 4: Hearing expenses reimbursed \$20.00**

30. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

### **Summary of Decision**


31. The tenant shall:
  - Pay to the landlord \$944.70, as follows:

○ Rent .....	\$852.70
○ Late fees .....	75.00
○ Hearing expenses .....	<u>20.00</u>
▪ Total .....	<u>\$944.70</u>
  - Pay a daily rate of rent beginning 08-April-2022 of \$28.10, until such time as the landlords regain possession of the property.
  - Vacate the property immediately
  - 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.

The landlord will be awarded an Order of Possession.

April 18, 2022

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office