

Residential Tenancies Tribunal

Application 2022-No.096 -NL

Decision 22-096-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 04-May-2022.
2. The applicant, [REDACTED], represented by [REDACTED] [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 her 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, electronically on 25-February-2022 by prepaid registered mail. A search of the tracking number indicates that the mail was sent on 22-February-2022 and that the tenant received the package on 25-February-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 her absence.
5. The landlord amended the application to increase rent owed from \$890.00 to \$4,350.00 to reflect the current amount owing.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$4,350.00
 - Late fees \$75.00
 - Security deposit applied against monies owed \$420.00

- Vacant possession of rental premises
- Hearing Expenses \$31.21

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 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$4,350.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. They entered a written term agreement with the tenant from 01-August-2021 until 31-July-2022. The tenant moved in 09-July-2021 and paid a prorated amount for the first partial month. The tenant pays \$840.00 a month. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$420.00 on 25-June-2021 and they are still in possession of the deposit.
10. The landlord submitted a rent ledger in indicates that on 01-December-2021 the tenant's payment put her rent up to date. The rent ledger below begins 01-January-2022.

Rent ledger
2022-No.96-NL

Date	Action	Amount	total
1-Jan-22	rent due	840.00	840.00
1-Jan-22	automatic withdrawal	-840.00	0.00
1-Jan-22	NSF bank return	840.00	840.00
1-Jan-22	returned cheque charge	50.00	890.00
22-Jan-22	automatic withdrawal	-840.00	50.00
22-Jan-22	NSF bank return	840.00	890.00
1-Feb-22	rent due	840.00	1730.00
1-Feb-22	automatic withdrawal	-840.00	890.00
1-Feb-22	NSF bank return	840.00	1730.00
1-Feb-22	returned cheque charge	50.00	1780.00
22-Feb-22	automatic withdrawal	-840.00	940.00
22-Feb-22	NSF bank return	840.00	1780.00
1-Mar-22	rent due	840.00	2620.00
1-Mar-22	automatic withdrawal	-840.00	1780.00
1-Mar-22	NSF bank return	840.00	2620.00

1-Mar-22	returned cheque charge	50.00	2670.00
1-Apr-22	rent due	840.00	3510.00
1-May-22	rent due daily rate May 01 - 04	110.48	3620.48

Daily rate \$840 x 12 months = \$10,080.00 per year

\$10,080.00 per year divided 365 days = \$27.62 a day

\$27.62 x 4 days = 110.48

11. The landlord said that she spoke with the tenant mid-March and discussed that the tenant's rent wasn't going through and she was being charged payment returned fees; they agreed that the landlord wouldn't process the automatic withdrawal going forward.

Analysis

12. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent beginning January 2022.

13. The tenant shall pay the landlord the rent owed totaling \$3,620.48.

Decision

14. The landlord's claim for rent succeeds in the amount of \$3,620.48.

Issue 2: Late fees \$75.00

Relevant Submissions

15. The landlord has proven, paragraph 12, that the tenant has been in rental arrears as of 02-January-2022 and is seeking the maximum allowed late fees.

Analysis

16. 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.

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

Decision

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

Issue 3: Security deposit applied against monies owed \$420.00

Relevant Submissions

19. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$420.00 on 25-June-2021 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

20. The landlord's claim for losses has been successful, paragraphs 17 and 21, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*

- (a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*
- (b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit*

Decision

21. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$420.00.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

22. The landlord submitted a termination notice (LL#04). It is on a “landlord’s notice to terminate early – cause” form for failure to pay rent. The notice is signed by the Property Administrator and dated for 12-January-2022, with a termination date of 27-January-2022.
23. The landlord said that the Building Caretaker called her and informed her that he posted the notice under the tenant’s door on 14-January-2022. The landlord said she spoke with the tenant about the notice after it was served.

Analysis

24. 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.

.....

25. 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.

26. The tenant should have vacated the property by 27-January-2022.

Decision

27. The landlord's claim for an order for vacant possession succeeds.
28. The tenant shall vacate the premises immediately.
29. 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.
30. The tenant shall pay a daily rate for rent beginning 05-May-2022 of \$26.72, as per paragraph 10, until such time as the landlords regain possession of the property.

Issue 5: Hearing expenses reimbursed \$31.21

31. The landlord submitted the receipts (LL#05) 20.00 for the cost of the application fee and \$11.21 for the cost of the registered mail; pursuant to policy 12.01, they are entitled to reimbursement of those costs from the tenant.

Summary of Decision

32. The tenant shall:

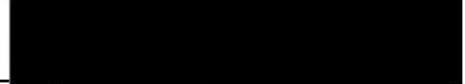
- Pay the landlord \$3,306.69 as follows:
 - Rent \$3,620.48
 - Late fees 75.00
 - Security deposit applied (420.00)
 - Hearing expenses 31.21
 - Total \$3,306.69
- Pay a daily rate of rent beginning 05-May-2022 of \$23.01, until such time as the landlords regain possession of the property.
- Vacate 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
- Shall retain the security deposit of \$420.00

May 6, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office