

Residential Tenancies Tribunal

Application 2022-No.113 -NL

Decision 22-0113-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:23 a.m. on 09-May-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" attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit stating that they had served the tenant with notice of the hearing on 19-April-2022, electronically by email. The tenant confirms her service.
5. The landlord amended their application to increase rent from \$755.00 to \$1,890.00 to reflect the current amount of rent owed. The landlord and tenant both agreed to apply the security deposit against monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,890.00
 - Late fees \$75.00
 - Security deposit applied against monies owed \$400.00
 - Vacant possession of rental premises

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 \$1,890.00

Landlord's Position

9. The landlord submitted a rental agreement (LL#02) with the application. They entered a written term agreement with the tenant beginning 01-November-2020. They have a monthly agreement. The tenant currently pays \$880.00 a month. The apartment complex had a promotion the first year the tenant moved in and they applied a renewal promotion in November of 2021, the promotion credits the rent \$135.00 each 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 \$400.00 on 02-November-2020 and they are still in possession of the deposit.

10. The landlord submitted a rent ledger (LL#03)

Rent ledger
File 2022-No.113.NL

Date	Action	Amount	total
	starting credit	-65.00	-65.00
1-Oct-21	rent owed	870.00	805.00
1-Oct-21	2 months over 12 promo	-135.00	670.00
5-Oct-21	rent paid	-100.00	570.00
18-Oct-21	rent paid	-300.00	270.00
27-Oct-21	rent paid	-335.00	-65.00
1-Nov-21	rent owed	880.00	815.00
9-Nov-21	rent paid	-300.00	515.00
29-Nov-21	rent paid	-225.00	290.00
1-Dec-21	rent owed	880.00	1170.00
7-Dec-21	rent paid	-220.00	950.00
20-Dec-21	rent paid	-300.00	650.00
29-Dec-21	rent paid	-50.00	600.00
1-Jan-22	rent owed	880.00	1480.00
1-Jan-22	renewal incentive over 12 months	-135.00	1345.00
4-Jan-22	rent paid	-200.00	1145.00
10-Jan-22	rent paid	-195.00	950.00
17-Jan-22	renewal incentive over 12 months for Nov	-135.00	815.00
17-Jan-22	renewal incentive over 12 months for Dec	-135.00	680.00
24-Jan-22	rent paid	-200.00	480.00
1-Feb-22	rent owed	880.00	1360.00
1-Feb-22	renewal incentive over 12 months	-135.00	1225.00
2-Feb-22	rent paid	-50.00	1175.00
7-Feb-22	rent paid	-150.00	1025.00

7-Feb-22	rent paid	-20.00	1005.00
8-Feb-22	rent paid	-250.00	755.00
14-Feb-22	rent paid	-200.00	555.00
21-Feb-22	rent paid	-200.00	355.00
28-Feb-22	rent paid	-200.00	155.00
1-Mar-22	rent owed	880.00	1035.00
1-Mar-22	renewal incentive over 12 months	-135.00	900.00
7-Mar-22	rent paid	-200.00	700.00
14-Mar-22	rent paid	-200.00	500.00
22-Mar-22	rent paid	-100.00	400.00
1-Apr-22	rent owed	880.00	1280.00
1-Apr-22	renewal incentive over 12 months	-135.00	1145.00
1-May-22	daily rate May 1 - 9	220.41	1365.41

Daily rate based on actual rent payment $\$880.00 - 135.00 = \745.00

$\$745.00 \times 12 \text{ months} = \$8,940.00$

$\$8,940.00 \text{ divided by } 365 \text{ days} = \24.49 a day

$\$24.49 \text{ a day} \times 9 \text{ days in May} = \220.41

11. The landlord said that the tenant was having trouble paying her rent and she had forgotten that after the first year, the promotion that credits \$135.00 to each month's rent would stop. The landlord said that when the tenant signed the contract it states that the promotion is only for one year.
12. The landlord said that because the tenant was having financial concerns, they applied a renewal promotion in January 2022 and backdated it to November of 2021.
13. The landlord said that they had spoken to the tenant by text and she was unable to pay rent, they worked out a payment plan where she would pay \$200.00 every week. She did this for part of February and March. After April started she didn't pay any rent.
14. The landlord said that the tenant had texted her 07-April-2022 and said that she would be moving out 01-May-2022. The landlord did not accept this notice because it wasn't for a full month. The tenant also offered to be out immediately and the landlord said that she would have to fill out a notice of termination.

Tenant's Position

15. The tenant said that she doesn't dispute the amount owed. She said she lost her job and knew she couldn't keep the apartment. She said she has arrangements made to move in with family.
16. The tenant doesn't dispute having to pay for rent owed but she doesn't think it's fair to have to pay for June because her notice wasn't accepted.
17. The tenant said that she was hoping to already be moved but her partner's grandmother passed away and that delayed their ability to get everything moved.

Analysis

18. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant owes rent in the amount of \$1,365.41 to the date of the hearing.
19. As this tribunal doesn't consider future rent, the landlord's ledger in paragraph 10 is amended to show a daily rate of rent to the date of the hearing for the month of May.

Decision

20. The landlord's claim for rent succeeds in the amount of \$1,365.41.

Issue 2: Late fees \$75.00

Relevant Submissions

21. The landlord has proven, paragraph 17, and according to the rent ledger in paragraph 10 the tenant has been in rental arrears as of 02-November-2021. The landlord is seeking the maximum allowed late fees.

Analysis

22. 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.*

23. As the tenant has been arrears since 02-November-2021 the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security deposit applied against monies owed \$400.00

Landlord's Position

25. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$400.00 on 02-November-2020 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Tenant's position

26. The tenant doesn't dispute that she owes rent and agrees to the security deposit being applied.

Analysis

27. The landlord's claim for losses has been successful, paragraphs 19 and 23, 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

28. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$400.00.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

29. 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 and dated for 07-February-21, with a termination date of 18-February-2022.

30. The landlord said that the Resident Manager served the notice to the tenant personally and placed it into her hand on 07-February-2022.

Tenant's Position

31. The tenant agrees to the service of the termination notice, as stated by the landlord.

Analysis

32. 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.*

.....

33. 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.

34. The tenant should have vacated the property by 18-February-2022.

Decision

35. The landlord's claim for an order for vacant possession succeeds.
36. The tenant shall vacate the premises immediately.
37. 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.
38. The tenant shall pay a daily rate for rent beginning 10-May-2022 of \$24.49, as per the table in paragraph 10, until such time as the landlords regain possession of the property.

Summary of Decision

39. The tenant shall:
 - Pay the landlord \$1,040.41 as follows:
 - Rent \$1,365.41
 - Late fees 75.00
 - Security deposit applied (400.00)
 - Total \$1,040.41
 - Pay a daily rate of rent beginning 10-May-2022 of \$24.49, 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 \$400.00.

May 10, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office