

Residential Tenancies Tribunal

Application 2022-No.115 -NL

Decision 22-0015-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:14 a.m. on 27-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 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 she 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 pre-paid registered mail. They sent the package on 22-February-2022 and provided this tribunal with a tracking number, the tracking number indicates that the package was delivered on 01-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 her absence.
5. The landlord amended the application to increase rent from \$283.00 to \$303.00.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$303.00
 - Late fees \$75.00
 - Vacant possession of rental premises
 - Hearing Expenses \$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, as well as Residential Tenancies Policy 12: Recovery of Fees and Costs.

Issue 1: Rent \$303.00

Relevant Submissions

9. The landlord said that they entered a written monthly agreement with the tenant beginning 01-November-2010. The tenant currently pays \$790.00 a month, which was increased from \$780.00 beginning 01-January-2022. 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 \$411.00 on 11-November-2010 and they are still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#02). She said that the tenant fell behind in her rent July and August of 2020. She said that the tenant has a subsidized payment for a portion of her rent, and she pays the remainder. The tenant's portion was not paid for those two months.
11. The landlord said that because the tenant hadn't paid her portion, she spoke with the tenant, the tenant then quickly made a payment for both of these months. The landlord then points out that in September the tenant once again misses her portion of the rent payment. After this the tenant pays her portion of the rent for the following months.
12. The landlord also noted that once January of 2022 begins there is an increase in the tenant's rent payment of an additional \$10.00 a month. The landlord said that the arrears for the tenant are for her portion of September's rent and the additional \$10.00 for the 4 months since the rent increased in January 2022. See below:

Date	Action	Amount	total
1-Jul-21	Rent due	780.00	780.00
2-Jul-21	NFLD Housing	-517.00	263.00
30-Jul-21	NFLD Housing	-517.00	-254.00
1-Aug-21	Rent due	780.00	526.00
1-Sep-21	Rent due	780.00	1306.00
1-Sep-21	rent paid	-263.00	1043.00
1-Sep-21	rent paid	-263.00	780.00
3-Sep-21	NFLD Housing	-517.00	263.00
1-Oct-21	Rent due	780.00	1043.00

1-Oct-21	NFLD Housing	-517.00	526.00
1-Oct-21	rent paid	-263.00	263.00
29-Oct-21	NFLD Housing	-517.00	-254.00
1-Nov-21	Rent due	780.00	526.00
1-Nov-21	rent paid	-263.00	263.00
26-Nov-21	NFLD Housing	-517.00	-254.00
1-Dec-21	Rent due	780.00	526.00
15-Dec-21	rent paid	-263.00	263.00
24-Dec-21	NFLD Housing	-517.00	-254.00
1-Jan-22	Rent due	790.00	536.00
14-Jan-22	rent paid	-263.00	273.00
28-Jan-22	NFLD Housing	-517.00	-244.00
1-Feb-22	rent due	790.00	546.00
1-Feb-22	rent paid	-263.00	283.00
25-Feb-22	NFLD Housing	-517.00	-234.00
1-Mar-22	Rent due	790.00	556.00
1-Mar-22	rent paid	-263.00	293.00
1-Apr-22	Rent due	790.00	1083.00
1-Apr-22	NFLD Housing	-517.00	566.00
13-Apr-22	rent paid	-263.00	303.00

13. The landlord is seeking full payment of rent owed.

Analysis

14. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay the rent owed.

15. The tenant shall pay the landlord the rent owed totaling \$303.00

Decision

16. The landlord's claim for rent succeeds in the amount of \$303.00.

Issue 2: Late fees \$75.00

Relevant Submissions

17. The landlord has shown in the rent ledger, paragraph 12, that the tenant has been in rental arrears as of 02-March- 2022 and is seeking the maximum allowed late fees.

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-March-2022, to reach the maximum amount of late fees owed a time period of 36 days would have to pass: beginning 02-March-2022 and ending on 05-April-2022. The landlord is entitled to a payment of the maximum fee of \$75.00 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 03-February-2022, with a termination date of 14-February-2022.

22. The landlord said that the Resident Manager called her on 03-February-2022 and verified that the notice had been served to the tenant.

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. A portion of the tenant's rent is paid by Newfoundland and Labrador Housing. As indicated on the ledger in paragraph 12. The payment for the tenant's subsidy sometimes comes in prior to when the rent is due. The payment for February's rent is paid by the subsidy on 28-January-2022, putting the tenant's payment into a surplus position. The tenant then falls back into arrears on 02-February-2022. The tenant's termination notice was signed and served on 03-February-2022, (according to the landlord in paragraph 22) and therefore the rent was not late for 5 days as required by Section 19 of the *Residential Tenancies Act, 2018*.

25. The termination notice is not valid.

Issue 4: Hearing expenses reimbursed \$20.00

26. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is not entitled to reimbursement of that cost from the tenant. Policy 12 states that a party may claim the filing fee as a hearing expense where they have received an award that is in an amount that is greater than the security deposit. As the landlord was awarded \$303.00 for rent and \$75.00 for late fees totaling \$378.00 and as the security deposit is \$411.00, the landlord's claim for the filing fee does not succeed.

Summary of Decision

27. The tenant shall pay the landlord \$378.00 as follows:

- Rent \$311.00
- Late fees 75.00
 - Total \$378.00

The termination notice with a termination date of 14-February-2022 is not a valid notice.

April 29, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office