

Residential Tenancies Tribunal

Application 2022-No.199-NL

Decision 22-0199-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 25-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” 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 29-April-2022. The landlord provided this board with the tracking number which indicates that the package was not picked up. The policy of this board is to consider this package delivered after 5 days. 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 their application to change rent owed from \$630.97 to \$458.34 reflect the current amount owed. The landlord also requested to apply the security deposit against monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$458.34
 - Late fees \$75.00

- Security deposit applied against monies owed \$120.50
- 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 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$458.34

Relevant Submissions

9. The landlord provided testimony on the details of the rental agreement. The tenant is currently in a monthly, written rental agreement. His current rent is \$770.00. His rental period is from the first day of the month to the last. Rent is due in full on the first day of the month. The tenant moved in on 15-August-2019. The tenant paid a security deposit of \$120.50 on 16-August-2021. The landlord is still in possession of the security deposit.
10. The landlord said that it is standard practice with all tenants to send them a letter informing them of option for lease renewal each year. The option letter is sent 6 months before the changes will commence. This tenant is currently in a monthly agreement and his rent was initially \$750.00 and increased to \$760.00 in September of 2020 and then to \$770.00 in September 2021.
11. The landlord submitted a rent ledger (LI#02) and indicated that the issue with non-payment, for the most part, is tied to the rent increases. She said that the tenant receives income support and that his income support has not increased to cover the rental increases for the 2020 and 2021 years; they are still paying the \$750.00 initially charged for rent. In addition to this, the months of December 2021 and March 2022 the full payment regular payment was not applied.
12. The landlord said that as the tenant receives income support, some months the payment for the following month comes in prior to the rent coming due. This will sometimes put the tenant ahead in his rent payments.
13. The rent ledger (LL#02) is as follows:

Rent ledger
2022-No. 199-NL

Date	Action	Amount	total
1-May-20	rent paid	-375.00	-375.00
1-Jun-20	Rent due	750.00	375.00

1-Jun-20		rent paid	-375.00	0.00
1-Jun-20		rent paid	-375.00	-375.00
1-Jul-20	rent due		750.00	375.00
30-Jun-20		rent paid	-375.00	0.00
30-Jun-20		rent paid	-375.00	-375.00
31-Jul-20		rent paid	-375.00	-750.00
31-Jul-20		rent paid	-375.00	-1125.00
1-Aug-20	Rent due		750.00	-375.00
1-Sep-20	Rent due		760.00	385.00
1-Sep-20		rent paid	-375.00	10.00
1-Sep-20		rent paid	-375.00	-365.00
1-Oct-20	Rent due		760.00	395.00
1-Oct-20		rent paid	-375.00	20.00
1-Oct-20		rent paid	-375.00	-355.00
30-Oct-20		rent paid	-375.00	-730.00
30-Oct-20		rent paid	-375.00	-1105.00
1-Nov-20	Rent due		760.00	-345.00
27-Nov-20		rent paid	-625.00	-970.00
1-Dec-20	Rent due		760.00	-210.00
24-Dec-20		rent paid	-750.00	-960.00
1-Jan-21		rent due	760.00	-200.00
26-Jan-21		rent paid	-750.00	-950.00
1-Feb-21	Rent due		760.00	-190.00
1-Mar-21	rent due		760.00	570.00
1-Mar-21		rent paid	-753.65	-183.65
1-Apr-21	rent due		760.00	576.35
1-Apr-21		rent paid	-375.00	201.35
1-Apr-21		rent paid	-375.00	-173.65
30-Apr-21		rent paid	-375.00	-548.65
30-Apr-21		rent paid	-375.00	-923.65
1-May-21	Rent due		760.00	-163.65
1-Jun-21	Rent due		760.00	596.35
1-Jun-21		rent paid	-375.00	221.35
1-Jun-21		rent paid	-375.00	-153.65
30-Jun-21		rent paid	-375.00	-528.65
30-Jun-21		rent paid	-375.00	-903.65
1-Jul-21	Rent due		760.00	-143.65
30-Jul-21		rent paid	-375.00	-518.65
30-Jul-21		rent paid	-375.00	-893.65
1-Aug-21	Rent due		760.00	-133.65
1-Sep-21	Rent due		770.00	636.35
1-Sep-21		rent paid	-375.00	261.35
1-Sep-21		rent paid	-375.00	-113.65
1-Oct-21	Rent due		770.00	656.35
1-Oct-21		rent paid	-375.00	281.35

1-Oct-21		rent paid	-375.00	-93.65
1-Nov-21	rent due		770.00	676.35
1-Nov-21		rent paid	-375.00	301.35
1-Nov-21		rent paid	-375.00	-73.65
29-Nov-21		rent paid	-189.63	-263.28
1-Dec-21	Rent due		770.00	506.72
16-Dec-21		rent paid	-425.25	81.47
1-Jan-22	Rent due		770.00	851.47
7-Jan-22		rent paid	-750.00	101.47
1-Feb-22	Rent due		770.00	871.47
8-Feb-22		rent paid	-750.00	121.47
1-Mar-22	Rent due		770.00	891.47
4-Mar-22		rent paid	-260.50	630.97
10-Mar-22		rent paid	-98.63	532.34
11-Mar-22		rent paid	-114.00	418.34
1-Apr-22	Rent due		770.00	1188.34
1-Apr-22		rent paid	-375.00	813.34
1-Apr-22		rent paid	-375.00	438.34
29-Apr-22		rent paid	-375.00	63.34
29-Apr-22		rent paid	-375.00	-311.66
1-May-22	daily rate 01-25 May		633.00	321.34

Daily rate of rent \$770.00 x 12 months = \$9,240.00

\$9,240.00 yearly rate divided by 365 days = \$25.32

\$25.35 daily rate x 25 days = \$633.00

14. As this board doesn't consider future rent, a daily rate of rent was calculated at \$25.35 and this has been applied to May up to and including the date of the hearing.

Analysis

15. Non-payment of rent is a violation of the rental agreement as detailed in paragraph 9. I accept the landlord's testimony and evidence that the tenant did not pay \$321.34 in rent.
16. The tenant shall pay the landlord the rent owed totaling \$321.24.

Decision

17. The landlord's claim for rent succeeds in the amount of \$321.24.

Issue 2: Late fees \$75.00

Relevant Submissions

18. The landlord has proven, paragraph 15, that the tenant was in and out of rental arrears beginning September of 2020. The tenant recently went into rental arrears on 02-December-2021 and stayed in arrears until 28-April-2022 and then back into arrears on 02-May-2022. The landlord is seeking the maximum allowed late fees.

Analysis

19. 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.

20. From the time period of 02-December-2021 until 28-April-2022 the tenant has been in arrears in his rent. This length of time, approximately 5 months, would exceed the maximum amount of late fees permitted: if calculated at \$5.00 for the first day and \$2.00 for each subsequent day. The landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security deposit applied against monies owed \$120.50

Relevant Submissions

22. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$120.50 on 16-August-2019 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

23. 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

24. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$120.50.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

25. 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 08-March-2022 with a termination date of 19-March-2022.
26. The landlord said that the Resident Manager personally delivered the notice to the tenant on 08-March-2022. The Resident Manager then sent her a text, to verify that the notice had been served.

Analysis

27. 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.*

.....

28. 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.
29. The tenant should have vacated the property by 19-March-2022.

Decision

30. The landlord's claim for an order for vacant possession succeeds.
31. The tenant shall vacate the premises immediately.
32. 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.
33. The tenant shall pay a daily rate for rent beginning 26-May-2022 of \$25.32, as per paragraph 13, until such time as the landlords regain possession of the property.

Issue 5: Hearing expenses reimbursed \$20.00

34. 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

35. The tenant shall:


- Pay the landlord \$295.91 as follows:
 - Rent \$321.41
 - Late fees 75.00
 - Hearing expenses 20.00
 - Security deposit applied (120.50)
 - Total \$295.91
- Pay a daily rate of rent beginning 26-May-2022 of \$25.32, 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 \$120.50.

May 26, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office