

Residential Tenancies Tribunal

Application 2022-No.277 -NL

Decision 22-0277-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 30-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 and it indicates the package was not picked up by the respondent. It is our policy to consider pre-paid registered mail 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 increase rent owed from \$273.00 to \$432.00 to reflect the current amount owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$432.00
 - 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 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$432.00

Relevant Submissions

9. The landlord reviewed the rental agreement they have with the tenant. They entered a written monthly agreement with the tenant beginning 01-February-2021. The tenant pays \$860.00 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 did not pay a security deposit.
10. The landlord submitted a rent ledger (LL#02). She said that the tenant is receiving income support of \$701.00 a month towards his rent. She said that initially, the tenant was paying \$850.00 a month and this increased after a year to \$860.00. She said until September 2021 the tenant was receiving 2 payments of \$99.50 every month which also was applied to his rent. Since October 2021 these payments have not been coming in and the tenant has fallen into arrears. Please see ledger below:

Rent ledger
2022-No.277-NL

Date	Action	Amount	total
25-Jan-21	AES rent paid	-53.00	-53.00
25-Jan-21	AES rent paid	-459.00	-512.00
29-Jan-21	NLHC rent paid	-676.00	-1188.00
1-Feb-21	rent due	850.00	-338.00
1-Feb-21	AES rent paid	-87.00	-425.00
25-Feb-21	NLHC rent paid	-701.00	-1126.00
25-Feb-21	NLHC rent paid	-25.00	-1151.00
1-Mar-21	rent due	850.00	-301.00
1-Mar-21	AES rent paid	-99.50	-400.50
1-Mar-21	AES rent paid	-99.50	-500.00
1-Apr-21	rent due	850.00	350.00
1-Apr-21	NLHC rent paid	-701.00	-351.00
1-Apr-21	AES rent paid	-99.50	-450.50

30-Apr-21		NLHC rent paid	-701.00	-1151.50
30-Apr-21		AES rent paid	-99.50	-1251.00
30-Apr-21		AES rent paid	-99.50	-1350.50
30-Apr-21		AES rent paid	-99.50	-1450.00
1-May-21	rent due		850.00	-600.00
28-May-21		NLHC rent paid	-701.00	-1301.00
1-Jun-21	rent due		850.00	-451.00
1-Jun-21		AES rent paid	-99.50	-550.50
1-Jun-21		AES rent paid	-99.50	-650.00
30-Jun-21		AES rent paid	-99.50	-749.50
30-Jun-21		AES rent paid	-99.50	-849.00
1-Jul-21	rent due		850.00	1.00
2-Jul-21		NLHC rent paid	-701.00	-700.00
30-Jul-21		NLHC rent paid	-701.00	-1401.00
30-Jul-21		AES rent paid	-99.50	-1500.50
30-Jul-21		AES rent paid	-99.50	-1600.00
1-Aug-21	rent due		850.00	-750.00
1-Sep-21	rent due		850.00	100.00
1-Sep-21		AES rent paid	-99.50	0.50
1-Sep-21		AES rent paid	-99.50	-99.00
3-Sep-21		NLHC rent paid	-701.00	-800.00
1-Oct-21	rent due		850.00	50.00
1-Oct-21		NLHC rent paid	-701.00	-651.00
29-Oct-21		NLHC rent paid	-701.00	-1352.00
1-Nov-21	rent due		850.00	-502.00
26-Nov-21		NLHC rent paid	-701.00	-1203.00
1-Dec-21	rent due		850.00	-353.00
24-Dec-21		NLHC rent paid	-701.00	-1054.00
1-Jan-22	rent due		850.00	-204.00
28-Jan-22		NLHC rent paid	-701.00	-905.00
1-Feb-22	rent due		860.00	-45.00
25-Feb-22		NLHC rent paid	-701.00	-746.00
1-Mar-22	rent due		860.00	114.00
1-Apr-22	rent due		860.00	974.00
1-Apr-22		NLHC rent paid	-701.00	273.00
29-Apr-22		NLHC rent paid	-701.00	-428.00
1-May-22	rent due daily rate May 1 - 30		848.10	420.10

Daily rate: $\$860 \times 12 \text{ months} = \$10,320.00$

$\$10,320.00 \text{ divided by } 365 \text{ days} = \28.27

$\$28.27 \times 30 \text{ days} = \848.10

11. A daily rate of \$28.27 was applied as this board doesn't consider future rent.
12. The landlord is seeking full payment of rent owed.

Analysis

13. 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 rent totaling \$420.10.
14. The tenant shall pay the landlord the rent owed totaling \$420.10.

Decision

15. The landlord's claim for rent succeeds in the amount of \$420.10.

Issue 2: Late fees \$75.00

Relevant Submissions

16. The landlord has proven that the tenant has been in rental arrears as 02-March-2022 and although they came out of arrears on 29-April-2022, they are back in arrears again on 02-May-2022.

Analysis

17. 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.

18. As per the rent ledger in paragraph 10, the tenant is in rent arrears beginning 02-March-2022 and remains in arrears until 29-April-2022. If we apply a \$5.00 charge to 02-March and add \$2.00 beginning 03-March by 02-April-2022 the late fees have reached their maximum allowed rate of \$75.00.
19. As the tenant has been arrears long enough to reach the maximum fee of \$75.00 set by the minister; the landlord is entitled to the full payment of \$75.00.

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 07-April-2022 with a termination date of 18-April-2022.
22. The landlord said that the Resident Manager posted the notice on the tenant's door on 07-April-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 18-April-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 31-May-2022 of \$28.27 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 the landlord \$515.10 as follows:
 - Rent \$420.10
 - Late fees \$75.00
 - Hearing expense 20.00
 - Total \$515.10
 - Pay a daily rate of rent beginning 31-May-2022 of \$28.27, until such time as the landlord regains 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.

May 31, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office