

Residential Tenancies Tribunal

Application 2022-No.373 -NL

Decision 22-0373-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 22-June-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that she served the tenants with notification of the hearing, in person, on 11-June-2022. Tenant2 confirmed receipt of notification.
5. The landlord amended her application to increase rent owed from \$1,100.00 to \$1,650.00 and late fees from \$11.00 to \$75.00 to reflect the current amount anticipated due to the lateness of rent payment. The landlord also amended the application to include security deposit applied to monies owed; \$550.00

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,650.00
 - Late fees \$75.00
 - Security deposit applied against monies owed \$550.00
 - 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 10: Statutory conditions, Section 14: Security deposit, Section 15: Fee for failure to pay rent, Section 19: Notice where failure to pay rent and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue 1: Rent \$1,650.00

Landlord's Position

9. The landlord submitted a rental agreement (LL#02) with the application. The landlord and tenants entered a written term agreement beginning 01-April-2022 until 31-March-2023. The landlord said that the tenants moved in early on 27-March-2022. The tenants pay \$1,100.00 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 \$550.00 on 23-March-2022 and she is still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#03) she said that the tenants had paid their rent in full up to May 2022. In May they didn't pay any rent and on 01-June-2022, they paid \$550.00.
11. The landlord is seeking full payment of rent totaling \$1,650.00.

Tenants' Position

12. Tenant1 agrees with the terms of the rental agreement as stated.
13. The tenants do not contest that the rent money is owed. Tenant1 said he is being harassed by the landlord and is withholding rent.

Analysis

14. Non-payment of rent is a violation of the rental agreement (LL#02). Both the landlord and tenants agree with the landlord's testimony and evidence that the tenants owe rent. The landlord stated that the tenants didn't pay May rent and then paid \$550.00 on 01-June-2022. The \$550.00 will be applied to the \$1,100.00 owed for May, leaving a balance of \$550.00 in May. This board doesn't consider future rent, therefore rent owed for June will be calculated at a daily rate up to and including the day of the hearing, as follows:
 - Rent per month \$1,100.00 x 12 months = \$13,200.00 per year
 - \$13,200.00 per year divided by 365 days = \$36.16 a day

- \$36.16 a day x 22 days = \$795.52 for rent up to the 22-June-2022.

15. The tenants will pay \$1,345.52 rent to the landlord as follows:

- May \$550.00
- June (until 22) \$795.52
- Total \$1,345.52

Decision

16. The landlord's claim for rent succeeds in the amount of \$1,345.52

Issue 2: Late fees \$75.00

Relevant Submissions

17. The landlord has proven, paragraph 14, that the tenants are in rental arrears as of 02-May-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-May-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: Security deposit applied against monies owed \$550.00

Relevant Submissions

21. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$550.00 on 23-March-2022 and she is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

22. The landlord's claim for losses has been successful, paragraph 16, and she 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

23. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$550.00.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

24. The landlord submitted two termination notices. She submitted a Section 24 notice for interference with peaceful enjoyment (LL#05) and a Section 19 termination notice for non-payment of rent (LL#06). They are both on a "landlord's notice to terminate early – cause" form.

Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy

25. The first notice served to the tenants (LL#05) is for interference with peaceful enjoyment and reasonable privacy. The house has a main floor unit and a basement apartment. The landlord said that she had received complaints from the downstairs tenants concerning issues with the upstairs tenants. Tenant1 and tenant2 live upstairs.

26. The notice is signed and dated for 04-May-2022 with a termination date of 31-May-2022. The landlord provided a text message showing that she had served the tenants with

notification of the termination by email. The landlord said she sent the email on the day signed 04-May-2022.

27. The landlord said that the downstairs tenants have complained that there is fighting, noise and the dog barking. The landlord submitted a handwritten document from the tenants about their experience. She noted that the middle page is missing from the submission. (The form is not sworn and this will be reflected in the weight it will be given in the decision.)
28. The downstairs tenant said that they can overhear the upstairs couple fighting, often late at night. He said he can mostly hear the male saying things and cursing at the female,
29. The downstairs' tenant also has issues with the dog barking and has told the landlord that the dogs barks whenever he is left alone.
30. On 20-April-2022 at 6:00 p.m. the police were called due to the noise upstairs. The tenants, told the landlord, that the police reported it was the upstairs tenants' child and her friends.
31. The landlord said she has had multiple complaints of noise, fighting, and the dog barking.

Section 19: Notice where failure to pay rent

32. The second notice that the landlord served to the tenants was, a landlord's notice to terminate early – cause for failure to pay rent. The notice was signed and dated on 07-May-2022 with a termination date of 18-May-2022. The landlord served this by email and sent a text (LL#09) on 07-May-2022, to direct the tenants to check their email for the notice.
33. The landlord said that the tenants didn't pay rent in May and were in arrears at the time she served them notice.

Tenant's Position

Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy

34. The tenants confirmed that they received the Section 24 – interference with peaceful enjoyment and reasonable privacy as stated by the landlord; by email on 04-May-2022.
35. The tenants said that the downstairs tenant works nightshifts and that he is sleeping during the day. Tenant1 said that the flooring isn't insulated, and that they had requested she install a sound barrier. He said that they can hear everything from downstairs as well.
36. Tenant2 said that their 13 year old daughter had some friends over on 20-April-2022 and that they went to get the kids some snacks and when they came back, the police had been called for noise. Tenant1 points out that this is 6:00 p.m. supper time.

37. Tenant2 said after the incident with the police being called she reached out to the landlord and provided the text message (TT#01) in the text she says that they want to clear up the issues with the complaints from downstairs and she addresses the issue with the sound barrier and that they can also hear everything going on downstairs as well. The landlord is not interested in disputing what has occurred."
38. Tenant2 said that they have been asked by the landlord not to do noisy activities, like laundry during certain hours of the day, to accommodate the schedule of the downstairs tenant. She said that they pay a lot for rent and are being caused a lot of stress by this situation.
39. Tenant1 believes that they are being harassed.

Section 19: Notice where failure to pay rent

40. Tenant2 confirms receipt of notice as stated.
41. Tenant1 said that they are being harassed by the landlord and she will receive the rent when the harassment stops.

Analysis

Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy

42. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

7. Peaceful Enjoyment and Reasonable Privacy -

The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

....

43. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, cause by the landlord or the tenant". Peaceful enjoyment may include,

but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.

44. It is the responsibility of the landlord to prove that the tenants are behaving in a manner that is outside of acceptable norms. The downstairs tenants complaints of a dog barking, a couple fighting, or teenagers being loud at supper time is not adequate evidence to terminate a rental agreement and evict a family from their home.
45. The landlord's claim for an Order of Vacant Possession based on the Section 24 notice, dated 04-May-2022 with a termination date of 31-May-2022, fails.

Section 19: Notice where failure to pay rent

46. 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.*

.....

47. 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.

48. The tenant should have vacated the property by 18-May-2022.

Decision

49. The landlord's claim for an order for vacant possession succeeds.
50. The tenant shall vacate the premises immediately.
51. 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.
52. The tenant shall pay a daily rate for rent beginning 23-June-2022 of \$36.16, as per paragraph 14, until such time as the landlords regain possession of the property.

Issue 5: Hearing expenses reimbursed \$20.00

53. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#10) and as her claim has been successful, pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

54. The tenant shall:
 - Pay the landlord \$890.52 as follows:
 - Rent \$1,345.52
 - Late fees 75.00
 - Hearing expenses 20.00
 - Security deposit applied (550.00)
 - Total \$890.52
 - Pay a daily rate of rent beginning 23-June-2022 of \$36.16, 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.

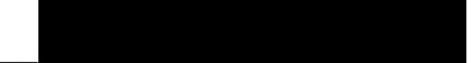
The landlord

- Will be awarded an Order of Possession.

- Shall retain the security deposit of \$550.00.

July 4, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office