

Residential Tenancies Tribunal

Application 2022-No.0630-NL

Decision 22-0630-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:17 p.m. on 25-October-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” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. I called them at the number provided ([REDACTED]), and the line was disconnected. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenants with notice of the hearing, in person on 13-October-2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. The landlord's application was amended to show rent increased from \$2,200.00 to \$2,300.00 to reflect the current amount owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$2,300.00
 - Late fees \$75.00
 - Vacant possession of rental premises

- Hearing Expenses \$48.97

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 \$2,300.00

Relevant Submissions

9. The landlord stated he has a verbal agreement with the tenants. He said that they moved in about a year ago. They are currently in a monthly agreement. The tenants pay \$600.00 rent 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 a rent payment usually comes in close to the third week of each month. The landlord said that the tenant paid a security deposit of \$250.00 and he is still in possession of the deposit.
10. The landlord stated that rent is often late and not paid in full. He submitted a rent ledger and reviewed the payments that he has received (LL#02), see below:

Rent ledger
2022-0630-NL

Date	Action	Amount	total
1-Jan-22	rent due	600.00	600.00
18-Jan-22	payment	-300.00	300.00
1-Feb-22	rent due	600.00	900.00
18-Feb-22	payment	-200.00	700.00
1-Mar-22	rent due	600.00	1300.00
18-Mar-22	payment	-1100.00	200.00
1-Apr-22	rent due	600.00	800.00
20-Apr-22	payment	-200.00	600.00
1-May-22	rent due	600.00	1200.00
20-May-22	payment	-600.00	600.00
1-Jun-22	rent due	600.00	1200.00
1-Jul-22	rent due	600.00	1800.00
14-Jul-22	payment	-400.00	1400.00
1-Aug-22	rent due	600.00	2000.00
19-Aug-22	payment	-900.00	1100.00
1-Sep-22	rent due	600.00	1700.00

1-Oct-22	daily rate 25 days x \$19.73 a day	493.25	2193.25
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Daily rate: \$600 x 12 months = \$7,200.00
 \$7,200.00 a year divided by 365 days = \$19.73
 \$19.73 x 25 days = \$493.25

11. As this tribunal doesn't consider future rent, a daily rate was calculated for October and included in the ledger.
12. The landlord is seeking full compensation for the rent owed, totaling \$2,193.25.

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 \$2,193.25.
14. The tenant shall pay the landlord the rent owed totaling \$2,193.25.

Decision

15. The landlord's claim for rent succeeds in the amount of \$2,193.25.

Issue 2: Late fees \$75.00

Relevant Submissions

16. The landlord has shown according to the rent ledger in paragraph 10, that the tenants have been in rental arrears as of 02-January-2022; he is seeking the maximum allowed late fees.

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 the tenant has been arrears since 02-January-2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

20. The landlord submitted two termination notices, the first notice (LL#03), is signed and dated for 07-September-2022, with a termination date of 20-September-2022. The reason for the termination is cited as Section 19 of the Residential Tenancies Act, for failure to pay rent.
21. The landlord said that he brought the notice to the tenants and gave it to tenant1 on 07-September-2022.
22. The second notice (LL#04) is signed and dated for 06-October-2022, with a termination date of 17-October-2022. The reason for the termination is cited as Section 19 of the Residential Tenancies Act, for failure to pay rent. The landlord said he also delivered this notice in person on the day it is signed, 06-October-2022, and handed it to tenant1.

Analysis

23. The notices were 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.

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24. The tenants were in rent arrears in excess of the 5 days when the notices were served. On the dates of termination, the tenants are still in arrears. The notices were served in accordance of the Act. The termination notices meet the requirements of the Act and are valid.
25. The tenants should have vacated the property on the termination date of the first notice 20-September-2022.

Decision

26. The landlord's claim for an order for vacant possession succeeds.
27. The tenants shall vacate the premises immediately.
28. The tenants 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 tenants shall pay a daily rate for rent beginning 26-October-2022 of \$19.73, as per the ledger in paragraph 10, until such time as the landlords regain possession of the property.

Issue 4: Hearing expenses reimbursed \$48.97

30. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) as well as the receipt for \$28.97 for mailing in his hearing package (LL#07) and pursuant to policy 12.01, as his claim has been successful, he is entitled to reimbursement of that cost from the tenants.

Summary of Decision

31. The tenants shall:

- Pay the landlord \$2,268.25 as follows:
 - Rent \$2,193.25.
 - Late fees 75.00
 - Total \$2,268.25
- Pay a daily rate of rent beginning 26-October-2022 of \$19.73, 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.

November 1, 2022

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office