

Residential Tenancies Tribunal

Application 2022-No.0642 -NL Decision 22-0642-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:12 a.m. on 08-September-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
4. The landlord submitted an Authorized Representative form (LL#01), he named [REDACTED] [REDACTED] as his representative. [REDACTED] attended by teleconference and will hereinafter be referred to as “the authorized representative.”

Preliminary Matters

5. The authorized representative stated that the tenant was served notification of today’s hearing by email on 12-August-2022. The tenant confirmed service.
6. The authorized representative amended the landlord’s application to rent owed from \$1,020.00 to \$1,820.00.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent \$1,820.00
 - Late fees \$132.00
 - Vacant possession of rental premises
 - Hearing Expenses \$20.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. 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.

Issue 1: Rent \$1,820.00

Landlord's Position

10. The authorized representative said that they have a written rental agreement with the tenant. They entered a written term agreement with the tenant from 01-December-2021 until 30-November-2022. The tenant and two other roommates moved in on 01-December-2021. The two other roommates moved out early June 2022. The tenant is still living there. The tenant pays \$1,000.00 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 authorized representative said that the tenant paid a security deposit of \$500.00 on 28-November-2021 and the landlord is still in possession of the deposit.
11. The authorized representative said that the other two tenants stopped paying rent in May and moved in June. He said that the landlord had a verbal agreement with the tenant, that she was going to stay and that she would pay the \$1,000.00 a month rent. She is still living there.
12. The authorized representative said that there are five other units in the building and they never received another complaint about a noise issue.
13. The landlord submitted a rent ledger (LL#02) a daily rate was calculated for September as this board doesn't consider future rent.

Rent ledger
2022-0642-NL

Date	Action	Amount	total
1-Jun-22	Rent due	1000.00	1000.00
1-Jun-22	payment	-300.00	700.00
17-Jun-22	payment	-80.00	620.00
1-Jul-22	Rent due	1000.00	1620.00
1-Jul-22	payment	-600.00	1020.00
1-Aug-22	Rent due	1000.00	2020.00
1-Aug-22	payment	-600.00	1420.00
1-Sep-22	Rent due daily rate \$32.88 x 8 days	263.04	1683.04
1-Sep-22	payment	-600.00	1083.04

Daily rate \$1,000.00 x 12 months = \$12,000.00
\$12,000.00 a year divided by 365 days = \$32.88
\$32.88 x 8 days = \$263.04

14. The landlord is seeking full reimbursement of rent owed.

Tenant's Position

15. The tenant agrees with the terms of the rental agreement, she points out that there was initially three people on the lease. She doesn't agree that she had a verbal agreement with the landlord to pay the \$1,000.00 a month rent. She also doesn't believe she should have to pay for all of June because the other two people moved out on 06-June-2022.
16. She said that she was in agreement to pay the rent however, she had a job where she had to work in the morning and one of the other units had people up until 4:00 a.m. and she lost that job. She said she reported the issue and the landlord didn't do anything about her noise complaint. The loss of the job caused her not to be able to pay the rent.

Analysis

17. 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 \$1,083.04.
18. The tenant is jointly and individually responsible for the rent as per a rent agreement. I accept that she remained living there after the other tenant's moved and I find that she shall pay the landlord the rent owed totaling \$1,083.04.

Decision

19. The landlord's claim for rent succeeds in the amount of \$1,083.04.

Issue 2: Late fees \$132.00

Landlord's Position

20. The landlord has proven, paragraph 18, that the tenant has been in rental arrears as of 02-June-2022 and is seeking the maximum allowed late fees.

Analysis

21. 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.*

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

Decision

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

Issue 3: Vacant Possession of the Rental Premises

Landlord's Position

24. The authorized representative 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 05-July-2022, with a termination date of 20-July-2022.

25. The authorized representative said that the notice was sent electronically on 08-July-2022.

Tenant's Position

26. The tenant confirms she received the termination notice on 08-July-2022.

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 20-July-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 09-September-2022 of \$32.88, as per paragraph 13, until such time as the landlords regain possession of the property.

Issue 4: 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 \$1,178.04 as follows:

- Rent \$1,083.04
- Late fees 75.00
- Hearing expenses 20.00
 - Total \$1,178.04
- Pay a daily rate of rent beginning 09-September-2022 of \$32.88, 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.

September 15, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office