

Residential Tenancies Tribunal

Application 2022-No.0847 -NL

Decision 22-0847-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 29-November-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 her by telephone at the start of the hearing; her number ([REDACTED]) was not in service. 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 she has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that he had served the tenant with notice of the hearing, by prepaid registered mail on 09-November-2022. Section 42 of the *Residential Tenancies Act, 2018*, considers prepaid registered mail delivered after 5 days. The tenant has been properly served and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
5. The landlord amended their application to increase rent from \$975.00 to \$1,800.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,800.00
 - Late fees 75.00
 - Security deposit applied against monies owed \$600.00

- Vacant possession of rental premises
- Hearing Expenses \$98.44

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 \$1,800.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. They entered a written term agreement with the tenant from 01-July-2019 until 30-June-2020. They are currently in a monthly agreement. The tenant currently pays \$825.00 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 \$600.00 on 01-May-2019 and they are still in possession of the deposit.
10. The landlord submitted a rent ledger(LL#03), he said that the tenant was paid in full the end of February 2022, the ledger begins March 2022 as follows:

Rent ledger
2022-0847-NL

Date	Action	Amount	total
1-Mar-22	rent owed	825.00	825.00
21-Mar-22	Payment	-775.00	50.00
1-Apr-22	rent owed	825.00	875.00
4-Apr-22	Payment	-825.00	50.00
1-May-22	rent owed	825.00	875.00
17-May-22	Payment	-825.00	50.00
1-Jun-22	rent owed	825.00	875.00
20-Jun-22	Payment	-400.00	475.00
30-Jun-22	Payment	-325.00	150.00
1-Jul-22	rent owed	825.00	975.00
25-Jul-22	Payment	-600.00	375.00
1-Aug-22	rent owed	825.00	1200.00
15-Aug-22	Payment	-225.00	975.00
22-Aug-22	Payment	-225.00	750.00
1-Sep-22	rent owed	825.00	1575.00
3-Sep-22	Payment	-600.00	975.00

1-Oct-22	rent owed	825.00	1800.00
5-Oct-22	Payment	-825.00	975.00
1-Nov-22	daily rate 01- 29 Nov	786.48	1761.48

Daily rate \$825.00 x 12 months = \$9,900.00

\$9,900.00 divided by 365 days = \$27.12

\$27.12 days x 29 days = \$786.48

11. A daily rate was calculated for the month of November up to and including the day of the hearing.
12. The landlord is seeking full compensation for rent owed.

Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$1,761.48.
14. The tenant shall pay the landlord the rent owed totaling \$1,761.48.

Decision

15. The landlord's claim for rent succeeds in the amount of \$1,761.48.

Issue 2: Late fees \$75.00

Relevant Submissions

16. The landlord has proven, paragraph 10, that the tenant has been in rental arrears as of 02-March-2022 and 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-March-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: Security deposit applied against monies owed \$600.00

Relevant Submissions

20. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$600.00 on 01-May-2019 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

21. The landlord's claim for losses has been successful, paragraphs 16 and 19, 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

22. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$600.00.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

23. The landlord submitted three termination notices (LL#04, 05 & 06). They are in letter form. They include the apartment address, the tenant's name, they are signed and dated by the landlord and the notices cite Section 19 of the *Residential Tenancies Act, 2018*, failure to pay rent, as the reason for termination. The last notice was signed and dated for 17-August-2022 with a termination date of 29-August-2022. The landlord said that the notice was hand delivered in person to the tenant on 17-August-2022.

Analysis

24. 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.

.....

25. 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. The previous orders are no longer valid, because the notice for August, comes after the previous notices this reasonably indicates to the tenant that she may stay until the last termination date.

26. The tenant should have vacated the property by 29-August-2022.

Decision

27. The landlord's claim for an order for vacant possession succeeds.
28. The tenant shall vacate the premises immediately.
29. 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.
30. The tenant shall pay a daily rate for rent beginning 30-November-2022 of \$27.12, as per paragraph 10, until such time as the landlords regain possession of the property.

Issue 5: Hearing expenses reimbursed \$98.44

31. The landlord submitted the following receipts for the cost of the hearing: a receipt for \$20.00 for the cost of the application fee (LL#08) and a receipt for \$13.44 for the cost of pre-paid registered mail (LL#07). He also submitted a receipt for the cost of a process server (LL#01) for \$65.00, the landlord had the process server serve the tenant on 31-October-2022 for notification of an earlier hearing.

Analysis

32. The cost of the process server, \$65.00, was incurred when the landlord served the tenant with notification of an earlier hearing date. The service was late and the hearing was subsequently postponed. A new hearing was scheduled and the landlord served the tenant once again. The first notice was sent incorrectly by landlord; I find that the tenant will not be responsible for that cost.
33. The cost of the application \$20.00 and the notice served by prepaid registered mail \$13.44 were necessary for the process of this hearing. As the landlord is successful in his claim and pursuant to policy 12.01, he is entitled to reimbursement of those costs from the tenant. I find that the tenant shall pay to the landlord \$33.44 for hearing fees.

Decision

34. The landlord's claim for hearing expenses succeeds in the amount of \$33.44.

Summary of Decision

35. The tenant shall:


- Pay the landlord \$1,269.92 as follows:
 - Rent \$1,761.48
 - Late fees 75.00
 - Hearing expenses 33.44
 - Security deposit applied (600.00)
 - Total \$1,269.92
- Pay a daily rate of rent beginning 30-November-2022 of \$27.12, 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 \$600.00

December 7, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office