

Residential Tenancies Tribunal

Application 2022-No.0910 -NL

Decision 22-0910-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 22-November-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.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that he served the tenant electronically with notification of today’s hearing on 25-October-2022. The tenant confirmed receipt of notification as stated.

Issues before the Tribunal

5. The landlord is seeking:
 - Rent \$2,500.00
 - Late fees \$75.00
 - Vacant possession of rental premises

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. 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 \$2,500.00

Landlord's position

8. The landlord said that they have a written rental agreement. The tenant moved in partway through September 2018. The initial agreement was for a term from September 2018 until August 2019. Currently they have a monthly agreement. The tenant pays \$1,000.00 each month for rent. Initially, the rent was due on the 1st day of each month. The payments are now in \$500.00 installments on the 1st and 15th day of each month. When the tenant moved in she paid \$500.00 security deposit on 20-September-2018; the landlord is still in possession of the deposit.
9. The landlord submitted a rent ledger (LL#02), he said that the tenant missed a \$500.00 payment in February of 2019 and this balance has carried forward since that time. The landlord said that the last payment received was on 06-October-2022. The rent ledger is as follows:

Rent ledger 2022-0910-NL				
Date	Action		Amount	total
1-Feb-19	rent due		1000.00	1000.00
15-Feb-19		payment	-500.00	500.00
1-Mar-19	rent due		1000.00	1500.00
11-Mar-19		payment	-1000.00	500.00
1-Apr-19	rent due		1000.00	1500.00
11-Apr-19		payment	-500.00	1000.00
20-Apr-19		payment	-500.00	500.00
1-May-19	rent due		1000.00	1500.00
17-May-19		payment	-1000.00	500.00
1-Jun-19	rent due		1000.00	1500.00
19-Jul-19		payment	-800.00	700.00
1-Jul-19		payment	-200.00	500.00
1-Aug-19	rent due		1000.00	1500.00
20-Aug-19		payment	-1000.00	500.00
1-Sep-19	rent due		1000.00	1500.00
21-Sep-19		payment	-1000.00	500.00
1-Oct-19	rent due		1000.00	1500.00
21-Oct-19		payment	-1000.00	500.00
1-Nov-19	rent due		1000.00	1500.00
21-Nov-19		payment	-1000.00	500.00
1-Dec-19	rent due		1000.00	1500.00
17-Dec-19		payment	-1000.00	500.00
1-Jan-20	rent due		1000.00	1500.00
25-Jan-20		payment	-1000.00	500.00
1-Feb-20	rent due		1000.00	1500.00
23-Feb-20		payment	-1000.00	500.00

1-Mar-20	rent due		1000.00	1500.00
31-Mar-20		payment	-1000.00	500.00
1-Apr-20	rent due		1000.00	1500.00
19-Apr-20		payment	-1000.00	500.00
1-May-20	rent due		1000.00	1500.00
21-May-20		payment	-1000.00	500.00
1-Jun-20	rent due		1000.00	1500.00
24-Jun-20		payment	-1000.00	500.00
1-Jul-20	rent due		1000.00	1500.00
21-Jul-20		payment	-1000.00	500.00
1-Aug-20	rent due		1000.00	1500.00
21-Aug-20		payment	-1000.00	500.00
1-Sep-20	rent due		1000.00	1500.00
21-Sep-20		payment	-1000.00	500.00
1-Oct-20	rent due		1000.00	1500.00
20-Oct-20		payment	-1000.00	500.00
1-Nov-20	rent due		1000.00	1500.00
2-Nov-20		payment	-500.00	1000.00
16-Nov-20		payment	-500.00	500.00
1-Dec-20	rent due		1000.00	1500.00
5-Dec-20		payment	-500.00	1000.00
17-Dec-20		payment	-500.00	500.00
1-Jan-21	rent due		1000.00	1500.00
4-Jan-21		payment	-500.00	1000.00
20-Jan-21		payment	-500.00	500.00
1-Feb-21	rent due		1000.00	1500.00
1-Feb-21		payment	-500.00	1000.00
17-Feb-21		payment	-500.00	500.00
1-Mar-21	rent due		1000.00	1500.00
4-Mar-21		payment	-500.00	1000.00
17-Mar-21		payment	-500.00	500.00
1-Apr-21	rent due		1000.00	1500.00
2-Apr-21		payment	-500.00	1000.00
21-Apr-21		payment	-500.00	500.00
1-May-21	rent due		1000.00	1500.00
2-May-21		payment	-500.00	1000.00
17-May-21		payment	-500.00	500.00
1-Jun-21	rent due		1000.00	1500.00
4-Jun-21		payment	-500.00	1000.00
18-Jun-21		payment	-500.00	500.00
1-Jul-21	rent due		1000.00	1500.00
3-Jul-21		payment	-500.00	1000.00
18-Jul-21		payment	-500.00	500.00
1-Aug-21	rent due		1000.00	1500.00
3-Aug-21		payment	-500.00	1000.00

17-Aug-21		payment	-500.00	500.00
1-Sep-21	rent due		1000.00	1500.00
10-Sep-21		payment	-500.00	1000.00
21-Sep-21		payment	-500.00	500.00
1-Oct-21	rent due		1000.00	1500.00
3-Oct-21		payment	-500.00	1000.00
16-Oct-21		payment	-500.00	500.00
1-Nov-21	rent due		1000.00	1500.00
6-Nov-21		payment	-500.00	1000.00
22-Nov-21		payment	-500.00	500.00
1-Dec-21	rent due		1000.00	1500.00
8-Dec-21		payment	-500.00	1000.00
26-Dec-21		payment	-500.00	500.00
1-Jan-22	rent due		1000.00	1500.00
2-Jan-22		payment	-500.00	1000.00
19-Jan-22		payment	-500.00	500.00
1-Feb-22	rent due		1000.00	1500.00
7-Feb-22		payment	-500.00	1000.00
18-Feb-22		payment	-500.00	500.00
1-Mar-22	rent due		1000.00	1500.00
8-Mar-22		payment	-500.00	1000.00
19-Mar-22		payment	-500.00	500.00
1-Apr-22	rent due		1000.00	1500.00
6-Apr-22		payment	-500.00	1000.00
20-Apr-22		payment	-500.00	500.00
1-May-22	rent due		1000.00	1500.00
6-May-22		payment	-500.00	1000.00
24-May-22		payment	-500.00	500.00
1-Jun-22	rent due		1000.00	1500.00
5-Jun-22		payment	-500.00	1000.00
20-Jun-22		payment	-500.00	500.00
1-Jul-22	rent due		1000.00	1500.00
6-Jul-22		payment	-500.00	1000.00
20-Jul-22		payment	-500.00	500.00
1-Aug-22	rent due		1000.00	1500.00
6-Aug-22		payment	-500.00	1000.00
21-Aug-22		payment	-500.00	500.00
1-Sep-22	rent due		1000.00	1500.00
1-Oct-22	rent due		1000.00	2500.00
26-Oct-22		payment	-600.00	1900.00
1-Nov-22	rent due		723.36	2623.36

Daily rent
 $\$1,000.00 \times 12 \text{ months} = \$12,000.00$
 $\$12,000.00 \text{ divided by } 365 = \32.88
 $\$32.88 \text{ daily rate} \times 22 \text{ Nov} = \723.36

10. Table amended to show a daily rate for November up to and including the date of the hearing.
11. The landlord has included in his ledger the tenant's initial cash payment.
12. The landlord is seeking full compensation for rent owed.

Tenant's position

13. The tenant confirms the details of the rental agreement as stated by the landlord.
14. The tenant recalls paying a cash payment at the start of her tenancy.
15. The tenant does not dispute that she owes rent.

Analysis

16. 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 \$2,623.36.
17. The tenant shall pay the landlord the rent owed totaling \$2,623.36.

Decision

18. The landlord's claim for rent succeeds in the amount of \$2,623.36.

Issue 2: Late fees \$75.00

Relevant Submissions

19. The landlord has proven, according to the ledger in paragraph 9, that the tenant has been in rental arrears as of 02-February-2019 and is seeking the maximum allowed late fees.

Analysis

20. 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.

21. As the tenant has been arrears since 02-February-2019, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

23. 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 13-October-2022 with a termination date of 24-October-2022.
24. The landlord said that he served the notice electronically, by email and text on 13-October-2022 at 3:48 p.m.

Analysis

25. 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.

.....

26. 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.

27. The tenant should have vacated the property by 24-October-2022.

Decision

28. The landlord's claim for an order for vacant possession succeeds.

29. The tenant shall vacate the premises immediately.

30. 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.

31. The tenant shall pay a daily rate for rent beginning 23-November-2022 of \$32.88, as per the table in paragraph 9, until such time as the landlords regain possession of the property.

Summary of Decision

32. The tenant shall:

- Pay the landlord \$2,698.36 as follows:
 - Rent \$2,623.36.
 - Late fees 75.00
 - Total \$2,698.36

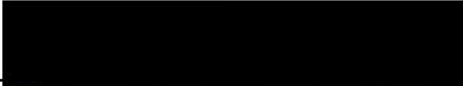
- Pay a daily rate of rent beginning 23-November-2022 of \$32.88, until such time as the landlords regain possession of the property.
- Vacate the property immediately
- Pay to the landlords any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

The landlord

- Is awarded an Order of Possession.

November 28, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office