

Residential Tenancies Tribunal

Application 2022-No.1046 -NL Decision 22-1046-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 18-January-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" 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 when I reached her by telephone at the start of the hearing she disconnected the call. 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 they had served the tenant with notice of the hearing, electronically on 05-January-2023 to the tenant's email [REDACTED]. The landlord said that the tenant provided them the email address and they provided proof of service. As the tenant was served correctly and any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.
5. The landlord amended their application to increase rent from \$2,850.00 to \$5,974.00 and late fees from \$375.00 to \$525.00 to reflect the current amount due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$5,974.00
 - Late fees \$525.00
 - 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 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$5,974.00

Relevant Submissions

9. The landlords submitted a rental agreement (LL#02) with their application. They entered a written term agreement with the tenant from 01-February-2016 until 31-January-2017; currently they are in a monthly agreement. The tenant pays \$1,250.00 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 \$900.00 in 2016 and they are still in possession of the deposit.
10. The landlords submitted a rent ledger (LL#03) as follows:

Date	Action	Amount	total
1-Jan-22	Rent owed	1250.00	1250.00
4-Jan-22	payment	-1250.00	0.00
30-Jan-22	late fee	9.00	9.00
1-Feb-22	Rent owed	1250.00	1259.00
3-Feb-22	payment	-1250.00	9.00
28-Feb-22	late fee	7.00	16.00
1-Mar-22	Rent owed	1250.00	1266.00
5-Mar-22	payment	-1250.00	16.00
30-Mar-22	late fee	11.00	27.00
1-Apr-22	Rent owed	1250.00	1277.00
5-Apr-22	payment	-900.00	377.00
19-Apr-22	payment	-350.00	27.00
30-Apr-22	late fee	39.00	66.00
1-May-22	Rent owed	1250.00	1316.00
16-May-22	payment	-1250.00	66.00
30-May-22	late fee	33.00	99.00
1-Jun-22	Rent owed	1250.00	1349.00
30-Jun-22	late fee	75.00	1424.00
1-Jul-22	Rent owed	1250.00	2674.00

6-Jul-22		payment	-1250.00	1424.00
18-Jul-22		payment	-1000.00	424.00
30-Jul-22	late fee		75.00	499.00
1-Aug-22	Rent owed		1250.00	1749.00
1-Aug-22		payment	-250.00	1499.00
2-Aug-22		payment	-900.00	599.00
30-Aug-22	late fee		75.00	674.00
1-Sep-22	Rent owed		1250.00	1924.00
2-Sep-22		payment	-1250.00	674.00
1-Oct-22	Rent owed		1250.00	1924.00
30-Oct-22	late fee		75.00	1999.00
1-Nov-22	Rent owed		1250.00	3249.00
30-Nov-22	late fee		75.00	3324.00
1-Dec-22	Rent owed		1250.00	4574.00
30-Dec-22	late fee		75.00	4649.00
1-Jan-23	Rent owed		1250.00	5899.00

11. Landlord1 said that the tenant was frequently late with the rent. They provided a rent ledger for the past year showing money owed. They included in the ledger late fee charges that they applied.
12. Landlord1 said that the last time the tenant paid rent was 02-September-2022. They are seeking full payment of monies 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 was frequently late with her rent payments and did not pay rent after 02-September-2022.
14. The landlord's rent ledger includes late fees applied when rent is late. The landlords have applied this fee incorrectly. 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.

15. The rent ledger provided (LL#03) and reflected in paragraph 10 has the maximum amount of late fees applied to the rent owed each month. Late fees are to be applied \$5.00 on the first day that rent is late; in this case 02-January-2022 late fees continue to be applied after the first day at a rate of \$2.00 a day up to a maximum of \$75.00; in this case the tenant's late fees are at the maximum amount on 06-February-2022. The tenant is then considered in rent arrears until full rent and the late fees are paid.
16. The table should read as follows:

Date	Action	Amount	total
1-Jan-22	Rent owed	1250.00	1250.00
4-Jan-22	payment	-1250.00	0.00
2-Jan-22	late fee	5.00	5.00
31-Jan-22	late fee \$2.00 x 29 days	58.00	63.00
1-Feb-22	Rent owed	1250.00	1313.00
3-Feb-22	payment	-1250.00	63.00
6-Feb-22	late fee \$2.00 x 6 days maximum amount	12.00	75.00
1-Mar-22	Rent owed	1250.00	1325.00
5-Mar-22	payment	-1250.00	75.00
1-Apr-22	Rent owed	1250.00	1325.00
5-Apr-22	payment	-900.00	425.00
19-Apr-22	payment	-350.00	75.00
1-May-22	Rent owed	1250.00	1325.00
16-May-22	payment	-1250.00	75.00
1-Jun-22	Rent owed	1250.00	1325.00
1-Jul-22	Rent owed	1250.00	2575.00
6-Jul-22	payment	-1250.00	1325.00
18-Jul-22	payment	-1000.00	325.00
1-Aug-22	Rent owed	1250.00	1575.00
1-Aug-22	payment	-250.00	1325.00
2-Aug-22	payment	-900.00	425.00
1-Sep-22	Rent owed	1250.00	1675.00
2-Sep-22	payment	-1250.00	425.00
1-Oct-22	Rent owed	1250.00	1675.00
1-Nov-22	Rent owed	1250.00	2925.00
1-Dec-22	Rent owed	1250.00	4175.00
1-Jan-23	Rent owed jan 1 - 18 daily rate	739.80	4914.80

Daily rate \$1,250 x 12 months = \$15,000 a year
\$15,000 a year divided by 365 days = \$41.10 a day
\$41.10 a day x 18 days = \$739.80

17. The rate of rent for January has to be calculated at a daily rate up to and including the date of the hearing. This tribunal does not consider future rate.
18. In consideration of the changes made to the ledger, I accept landlord1's testimony and evidence that the tenant owes rent totaling \$4,914.80.
19. I find that the tenant shall pay the landlord the rent owed totaling \$4,914.80.

Decision

20. The landlord's claim for rent succeeds in the amount of \$4,914.80.

Issue 2: Late fees \$525.00

Relevant Submissions

21. The landlord has applied for late fees totaling \$525.00, as included in his rent ledger shown in paragraph 10.

Analysis

22. It has been determined in paragraphs 14 and 15 that the late fees were applied incorrectly. The approved total of \$75.00 as approved by the minister is shown in the table in paragraph 16. This amount is already awarded in paragraph 20.
23. As the landlords have already been awarded late fees in accordance with the *Act*, no additional fees will be awarded.

Decision

24. The landlord's claim for additional late fees fails.

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

25. The landlords submitted a termination notice (LL#04). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 23-November-2022, with a termination date of 04-December-2022.
26. Landlord1 said that he taped the notice to the tenant's door on 23-November-2022 and then sent an email at 1:32 p.m. telling the tenant that the notice was there. The landlords provided a picture of the posted notice and a copy of the email (LL#04) to show proof of service.

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 04-December-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 19-January-2023 of \$41.10, as per paragraph 16, 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#05) and as the claim is successful, 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 \$4,934.80 as follows:
 - Rent \$4,914.80
 - Hearing expenses 20.00
 - Total \$4,934.80
- Pay a daily rate of rent beginning 19-January-2023 of \$41.10, 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.

January 26, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office