

Residential Tenancies Tribunal

Application 2022-No.1091 -NL

Decision 22-1091-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:01 a.m. on 26-January-2023.
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” tenant1 did attend by teleconference and tenant2 did not attend.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenants with notice of the hearing, electronically on 11-January-2023 to both the tenants’ emails. Tenant1 said that tenant2 would not be attending the hearing. 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 he has been properly served. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. The landlord amended his application to increase rent from \$2,200.00 to \$3,300.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$3,300.00
 - Late fees \$75.00
 - Security deposit applied against monies owed \$550.00
 - 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 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$3,300.00

Landlord's Position

9. The landlord submitted a rental agreement (LL#02) with the application. He entered a written monthly agreement with the tenants beginning 06-October-2022. Rent is \$1,100.00 a month which includes utilities. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. As the tenants moved in after the first week of the month, the landlord adjusted the first month's payment down to \$750.00. The landlord said that the tenants paid a security deposit of \$550.00 and he is still in possession of the deposit.
10. The landlord explained that tenant1 never paid rent. He testified that she made a partial payment of \$180.00 on 07-October-2022 and then immediately canceled the bank transfer. He said that he received two ½ payments from tenant2 and then he subsequently moved out. He said that tenant1 has never paid any rent; he submitted a rent ledger (LL#03) as follows:

Date	Action	Amount	total
6-Oct-22	Rent due	750.00	750.00
7-Oct-22	payment	-180.00	570.00
7-Oct-22	payment canceled	180.00	750.00
7-Oct-22	late fee \$5	5.00	755.00
31-Oct-22	late fee \$2 x 24	48.00	803.00
30-Oct-22	payment	-375.00	428.00
1-Nov-02	Rent due	1100.00	1528.00
2-Nov-22	late fee \$5	5.00	1533.00
8-Nov-22	late fee \$2 x 6	12.00	1545.00
9-Nov-22	payment	-375.00	1170.00
30-Nov-22	late fee \$2 x 3	5.00	1175.00
1-Dec-22	Rent due	1100.00	2275.00
1-Jan-22	Rent due	1100.00	3375.00

11. The landlord is seeking full payment of rent owed

Tenant's Position

12. The tenant confirms that she has not made rent payments. She said that when they first moved in they didn't have a signed written agreement and the terms were not confirmed. Later she and tenant2's relationship ended and she didn't know how she was going to pay for rent. She explained that she tried to make a payment plan with the landlord but he was still going ahead with his plans to terminate her tenancy, so she didn't make payments. She is also involved with Thrive and should the landlord wish to enter a rental agreement with just her name on the lease; they would help her with the payment of her rent owed.

Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#02). Both parties agree that the tenants didn't pay rent as stated by the landlord.
14. In consideration of the landlord's claim, the rent ledger has been amended to remove late fees, which will be considered in Issue 2. Rent will also be calculated at a daily rate for the month of January up to and including the date of the hearing; as this tribunal does not consider future payments. Amended ledger is as follows:

Rent ledger
2022-1091-NL

Date	Action	Amount	total
6-Oct-22	Rent due	750.00	750.00
7-Oct-22	payment	-180.00	570.00
7-Oct-22	payment canceled	180.00	750.00
30-Oct-22	payment	-375.00	375.00
1-Nov-02	Rent due	1100.00	1475.00
9-Nov-22	payment	-375.00	1100.00
1-Dec-22	Rent due	1100.00	2200.00
1-Jan-22	Rent due daily rate Jan 01-26	940.16	3140.16

Daily rate \$1,100 x 12 months = \$13,200.00

\$13,200 divided by 365 days = \$36.16 per day

15. I acknowledge that tenant2 did move out of the premises, however as there are two signers on the rental agreement they are individually and collectively responsible for debt owed.
16. The tenants shall pay the landlord the rent owed totaling \$3,140.16.

Decision

17. The landlord's claim for rent succeeds in the amount of \$3,140.16.

Issue 2: Late fees \$75.00

Relevant Submissions

18. The landlord has proven, paragraph 17, that the tenants have been in rental arrears as of 07-October-2022 and he is seeking the maximum allowed late fees.

Analysis

19. 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.

20. As the tenants have been arrears since 07-October-2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security deposit applied against monies owed \$550.00

Relevant Submissions

22. The landlord stated in paragraph 9 that the tenants paid a security deposit of \$550.00 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

23. The landlord's claim for losses has been successful, paragraphs 17 and 21, and he 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

24. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$550.00.

Issue 4: Vacant Possession of the Rental Premises

Landlord's Position

25. The landlord submitted two termination notices (LL#05 & LL#06). The first notice is a Section 18 notice signed and dated of 01-December-2022 with a termination date of 28-February-2023.
26. The landlord testified that he then gave the tenants a notice for cause on 06-December-2022; the second notice (LL#06) is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 06-December-2022, with a termination date of 17-December-2022.
27. The landlord said that he served the notice electronically on 06-December-2022 at 2:11 p.m.

Tenant's Position

28. Tenant1 confirms service of the second notice as stated by the landlord.

Analysis

29. As the first notice has an earlier issue date and a later termination date it is canceled if the second notice is valid and will not be considered.

30. The second 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.

.....

31. The tenants were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenants were 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.
32. The tenants should have vacated the property by 17-December-2022.

Decision

33. The landlord's claim for an order for vacant possession succeeds.
34. The tenant shall vacate the premises immediately.
35. 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.

36. The tenants shall pay a daily rate for rent beginning 27-January-2023 of \$34.16, as per paragraph 14, until such time as the landlord regains possession of the property.

Issue 5: Hearing expenses reimbursed \$20.00

37. The landlord submitted the receipt for \$20.00 for the cost of the hearing (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

38. The tenants shall:


- Pay the landlord \$2,685.16 as follows:
 - Rent \$3,140.16
 - Late fees 75.00
 - Hearing expenses 20.00
 - Security deposit applied (550.00)
 - Total \$2,685.16
- Pay a daily rate of rent beginning 27-January-2023 of \$34.16, 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 \$550.00

January 27, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office