

Residential Tenancies Tribunal

Application 2022-No.1101 -NL Decision 22-1101-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 23-February-2022.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED], hereinafter referred to as "the tenant" attended and [REDACTED], hereinafter referred to as "tenant2," did not attend.

Preliminary Matters

4. Tenant2 was not present or represented at the hearing and I was unable to reach her by telephone ([REDACTED]) at the start of 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 she has been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served both the tenants with notice of the hearing, by prepaid registered mail ([REDACTED] and [REDACTED]). The tenant confirmed he received his documents as stated. Any further delay in these proceedings would unfairly disadvantage the landlord, I therefore proceeded with the hearing in tenant2's absence.
5. The landlord amended their application to increase rent from \$1,391.00 to \$3,191.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$3,191.00
 - Late fees \$75.00
 - Security deposit applied against monies owed \$240.00

- 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 \$3,191.00

Landlord's Position

9. The landlord reviewed the terms of the rental agreement. They entered a written monthly agreement with the tenants beginning 01-September-2019. The tenants initially paid \$795.00 a month currently they pay \$900.00 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 receives income support and that he was supposed to pay a security deposit of \$372.00, however they only paid \$200.00 on 03-September-2019. They are still in possession of the deposit.
10. The landlord said that the tenants' rent was often paid late so he had taken the additional \$5.00 payments towards late fees. He agrees to have the rent ledger amended to credit the additional payments to the security deposit instead of late fees. The late fees credited are as follows:

Security deposit ledger
2022-1101-NL

Date	Action	Amount	total
1-Sep-19	security deposit 372		0.00
3-Sep-29	payment	-200.00	-200.00
15-Nov-19	payment	-5.00	-205.00
16-Jan-20	payment	-10.00	-215.00
16-Jul-20	payment	-5.00	-220.00
14-Aug-20	payment	-20.00	-240.00

11. The landlord said he had written numerous requests to income support to have the rent paid directly to him. He said he never told income support to stop paying rent on behalf of the tenant. He submitted a rent ledger (LL#02):

2022-1101-NL

Rent ledger

Date	Action	Amount	total
1-Sep-19	rent	795.00	795.00
1-Sep-19	payment	-795.00	0.00
1-Oct-10	rent	795.00	795.00
2-Oct-19	payment	-400.00	395.00
16-Oct-10	payment	-395.00	0.00
1-Nov-19	rent	795.00	795.00
1-Nov-19	payment	-400.00	395.00
15-Nov-19	payment	-400.00	-5.00
15-Nov-19	applied to security deposit	5.00	0.00
29-Nov-19	payment	-400.00	-400.00
1-Dec-19	rent	795.00	395.00
16-Dec-19	payment	-300.00	95.00
31-Dec-19	payment	-500.00	-405.00
1-Jan-20	rent	795.00	390.00
16-Jan-20	payment	-400.00	-10.00
16-Jan-20	applied to security deposit	10.00	0.00
1-Feb-20	rent	795.00	795.00
1-Feb-20	payment	-325.00	470.00
16-Feb-20	payment	-450.00	20.00
29-Feb-20	payment	-325.00	-305.00
1-Mar-20	rent	795.00	490.00
13-Mar-20	payment	-475.00	15.00
1-Apr-20	rent	795.00	810.00
1-Apr-20	payment	-400.00	410.00
16-Apr-20	payment	-400.00	10.00
1-May-20	rent	795.00	805.00
1-May-20	payment	-400.00	405.00
15-May-20	payment	-400.00	5.00
30-May-20	payment	-400.00	-395.00
1-Jun-20	rent	795.00	400.00
16-Jun-20	payment	-400.00	0.00
1-Jul-20	rent	795.00	795.00
1-Jul-20	payment	-400.00	395.00
16-Jul-20	payment	-400.00	-5.00
16-Jul-20	applied to security deposit	5.00	0.00
1-Aug-20	rent	795.00	795.00
5-Aug-20	payment	-420.00	375.00
14-Aug-20	payment	-395.00	-20.00
14-Aug-20	applied to security deposit	20.00	0.00

1-Sep-20	rent		795.00	795.00
1-Sep-20		payment	-400.00	395.00
16-Sep-20		payment	-395.00	0.00
1-Oct-20	rent		795.00	795.00
1-Oct-20		payment	-400.00	395.00
16-Oct-20		payment	-395.00	0.00
1-Nov-20	rent		795.00	795.00
1-Nov-20		payment	-400.00	395.00
14-Nov-20		payment	-395.00	0.00
1-Dec-20	rent		795.00	795.00
1-Dec-20		payment	-400.00	395.00
16-Dec-20		payment	-395.00	0.00
1-Jan-21	rent		795.00	795.00
1-Jan-21		payment	-400.00	395.00
15-Jan-21		payment	-395.00	0.00
1-Feb-21	rent		795.00	795.00
1-Feb-21		payment	-400.00	395.00
16-Feb-21		payment	-395.00	0.00
1-Mar-21	rent		795.00	795.00
1-Mar-21		payment	-400.00	395.00
16-Mar-21		payment	-395.00	0.00
1-Apr-21	rent		795.00	795.00
10-Apr-21		payment	-350.00	445.00
16-Apr-21		payment	-440.00	5.00
1-May-21	rent		795.00	800.00
1-May-21		payment	-400.00	400.00
16-May-21		payment	-395.00	5.00
1-Jun-21	rent		795.00	800.00
1-Jun-21		payment	-400.00	400.00
16-Jun-21		payment	-395.00	5.00
1-Jul-21	rent		795.00	800.00
1-Jul-21		payment	-400.00	400.00
16-Jul-21		payment	-395.00	5.00
31-Jul-21		payment	-400.00	-395.00
1-Aug-21	rent		795.00	400.00
14-Aug-21		payment	-395.00	5.00
1-Sep-21	rent		795.00	800.00
2-Sep-21		payment	-400.00	400.00
17-Sep-21		payment	-395.00	5.00
30-Sep-21		payment	-400.00	-395.00
1-Oct-21	rent		795.00	400.00
16-Oct-21		payment	-300.00	100.00
31-Oct-21		payment	-410.00	-310.00
1-Nov-21	rent		795.00	485.00
17-Nov-21		payment	-400.00	85.00

1-Dec-21	rent	795.00	880.00
2-Dec-21		payment	-400.00
16-Dec-21		payment	-400.00
1-Jan-22	rent	795.00	875.00
2-Jan-22		payment	-300.00
5-Jan-22		payment	-100.00
15-Jan-22		payment	-350.00
1-Feb-22	rent	795.00	920.00
1-Feb-22		payment	-400.00
16-Feb-22		payment	-400.00
1-Mar-22	rent	795.00	915.00
1-Mar-22		payment	-400.00
17-Mar-22		payment	-400.00
1-Apr-22	rent	900.00	1015.00
1-Apr-22		payment	-450.00
1-Apr-22		payment	-460.00
1-May-22	rent	900.00	1005.00
1-May-22		payment	-29.00
2-May-22		payment	-425.00
14-May-22		payment	-450.00
1-Jun-22	rent	900.00	1001.00
1-Jun-22		payment	-450.00
16-Jun-22		payment	-460.00
1-Jul-22	rent	900.00	991.00
2-Jul-22		payment	-450.00
15-Jul-22		payment	-450.00
1-Aug-22	rent	900.00	991.00
1-Aug-22		payment	-450.00
16-Aug-22		payment	-450.00
1-Sep-22	rent	900.00	991.00
3-Sep-22		payment	-450.00
19-Sep-22		payment	-450.00
30-Sep-22		payment	-450.00
1-Oct-22	rent	900.00	541.00
16-Oct-22		payment	-450.00
1-Nov-22	rent	900.00	991.00
1-Nov-22		payment	-495.00
1-Dec-22	rent	900.00	1396.00
1-Jan-23	rent	900.00	2296.00
1-Feb-23	rent Feb 1 - 23	680.55	2976.55

Daily rate \$900 x 12 months = \$10,800

\$10,800 divided by 365 days = \$29.59

\$29.59 x 23 days = \$680.55

12. Note: ledger is amended to show a daily rate for February as this tribunal doesn't consider future rent.
13. The landlord is seeking the full amount of rent owed totaling \$2,976.55

Tenant's Position

14. The tenant agrees with the details of the rental agreement. He said that he paid the initial \$200.00 security deposit and was paying \$5.00 extra to make up the outstanding security deposit balance.
15. The tenant believes that the landlord contacted income support and told them to stop paying his 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 \$2,976.55.
17. The tenant shall pay the landlord the rent owed totaling \$2,976.55.

Decision

18. The landlord's claim for rent succeeds in the amount of \$2,976.55.

Issue 2: Late fees \$75.00

Relevant Submissions

19. The landlord has proven, paragraph 11, that the tenant has been in rental arrears as of 02-October-2022 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-October-2022, 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: Security deposit applied against monies owed \$240.00

Relevant Submissions

23. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$200.00 on 03-September-2019 the tenant explained that the additional monies paid at the start of the tenancy was towards the balance of security deposit owed. The landlord agreed to have this credited to his security deposit as shown in the ledger in paragraph 10 for a total of \$240.00. They are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

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

25. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$240.00.

Issue 4: Vacant Possession of the Rental Premises

Landlord's Position

26. 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 02-December-2022, with a termination date of 17-December-2022.
27. The landlord submitted an affidavit (LL#04) and gave testimony stating that he posted the notice to the tenants' door at approximately 10:00 a.m. on 02-December-2022.

Tenant's Position

28. The tenant believes that the landlord is trying to get rid of him. He does confirm receipt of notice as stated by the landlord.

Analysis

29. 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.

.....

30. 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.
31. The tenant should have vacated the property by 17-December-2022.

Decision

32. The landlord's claim for an order for vacant possession succeeds.
33. The tenant shall vacate the premises immediately.
34. 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.
35. The tenant shall pay a daily rate for rent beginning 24-February-2023 of \$29.59, as per paragraph 11, until such time as the landlords regain possession of the property.

Issue 5: Hearing expenses reimbursed \$20.00

36. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

37. The tenant shall:
 - Pay the landlord \$2,831.55 as follows:
 - Rent \$2,976.55
 - Late fees 75.00
 - Hearing expenses 20.00
 - Security deposit applied (240.00)
 - Total \$2,831.55
 - Pay a daily rate of rent beginning 24-February-2023 of \$29.59, 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 \$240.00

February 28, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office