

Residential Tenancies Tribunal

Application 2022-No.1110 -NL Decision 22-1110-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 31-January-2023.
2. The applicant, [REDACTED] represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1 and tenant2." Tenant1 attended and represented her party; tenant2 did not attend.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) with his application stating that they had hired an individual to personally serve the tenants with notice of the hearing. This was completed 7:00 p.m. on 19-January-2023. The notice would be considered served on 20-January-2023. Tenant1 confirmed receipt of notification as stated by the landlord.
5. The landlord amended their application to decrease rent from \$3,025.00 to \$2,325.00 and to increase late fees from \$195.00 to \$309.00; to reflect the current amounts due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$2,325.00
 - Late fees \$309.00
 - Vacant possession of rental premises

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 \$2,325.00

Landlord's Position

9. The landlord submitted a rental agreement (LL#02) with the application. They entered a written monthly agreement with the tenant beginning 01-August-2022. The tenant pays \$1,700.00 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 was supposed to pay a security deposit of \$1,275.00, however this payment was never made.

10. The landlord submitted a rent ledger to show monies owed. The ledger includes the cost for the security deposit and late fees applied by the landlord. See ledger below:

Rent ledger
2022-1110-NL

Date	Action	Amount	total
1-Aug-22	security deposit	1275.00	1275.00
1-Aug-22	Rent due	1700.00	2975.00
3-Aug-22		payment	-525.00
19-Aug-22		payment	-1050.00
1-Sep-22	Rent due	1700.00	3100.00
3-Sep-22		payment	-500.00
30-Sep-22	late fee	63.00	2663.00
1-Oct-22	Rent due	1700.00	4363.00
2-Oct-22		payment	-600.00
14-Oct-22		payment	-1050.00
29-Oct-22		payment	-775.00
31-Oct-22	late fee	62.00	2000.00
1-Nov-22	Rent due	1700.00	3700.00
10-Nov-22		payment	-800.00
26-Nov-22		payment	-850.00
30-Nov-22	late fee	60.00	2110.00
1-Dec-22	Rent due	1700.00	3810.00
14-Dec-22		payment	-600.00
23-Dec-22		payment	-700.00
31-Dec-22	late fee	62.00	2572.00
1-Jan-23	Rent due	1700.00	4272.00
7-Jan-23		payment	-950.00
22-Jan-23		payment	-750.00
31-Jan-23	late fee	62.00	2634.00

11. The landlord is seeking full compensation for monies owed.

Tenant's Position

12. Tenant1 confirmed the details of the rental agreement. She said that there was an agreement with the landlord, that tenant2 would do some work around the house and receive credit towards the security deposit. She confirms that this work wasn't completed and no payment was made towards the cost of the security deposit.

13. Tenant1 confirms the rent ledger submitted by the landlord reflects the payments made. She said she has recently returned to work and will be able to make the payments going forward.

Analysis

14. Non-payment of rent is a violation of the rental agreement (LL#02). Both parties agree that full rent payments have not been made.

15. The landlord has included the cost for the security deposit, as well as, the cost for the late fees in the rent ledger. For the purpose of this decision, the amended ledger below will be calculated without these charges. The late fees will be applied in Section 2 as approved by the Minister. The security deposit is the property of the tenant unless applied to a damage claim and should not be included with rent owed, as rent is for the use and enjoyment of the property and is the property of the landlord. See amended ledger below:

Rent ledger
2022-1110-NL

Date	Action	Amount	total
1-Aug-22	Rent due	1700.00	1700.00
3-Aug-22	payment	-525.00	1175.00
19-Aug-22	payment	-1050.00	125.00
1-Sep-22	Rent due	1700.00	1825.00
3-Sep-22	payment	-500.00	1325.00
1-Oct-22	Rent due	1700.00	3025.00
2-Oct-22	payment	-600.00	2425.00
14-Oct-22	payment	-1050.00	1375.00
29-Oct-22	payment	-775.00	600.00
1-Nov-22	Rent due	1700.00	2300.00
10-Nov-22	payment	-800.00	1500.00
26-Nov-22	payment	-850.00	650.00
1-Dec-22	Rent due	1700.00	2350.00
14-Dec-22	payment	-600.00	1750.00
23-Dec-22	payment	-700.00	1050.00
1-Jan-23	Rent due	1700.00	2750.00
7-Jan-23	payment	-950.00	1800.00
22-Jan-23	payment	-750.00	1050.00

16. I find that the tenant shall pay the landlord the rent owed totaling \$1,050.00.

Decision

17. The landlord's claim for rent succeeds in the amount of \$1,050.00.

Issue 2: Late fees \$309.00

Relevant Submissions

18. The landlord has proven, paragraph 15, that the tenants have been in rental arrears as of 02-August-2022 and have remained in arrears throughout their tenancy, the landlord 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. The landlord's calculations in the table in paragraph 10 exceed the maximum amount of late fees that may be applied. Once tenants are in rent arrears they may be charged \$5.00 for the first day late. Therefore as the rent is due on the first day of the month the first day it is late would be the 2nd day of the month. Then if the tenants remain in arrears, as is the case in this instance, a charge of \$2.00 a day will accumulate until the maximum rate of \$75.00 has been applied. As the tenants have been arrears since 02-August-2022, I find 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: Vacant Possession of the Rental Premises

Landlord's Position

22. The landlord 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 16-December-2022, with a termination date of 27-December-2022.
23. The landlord said that he personally gave the notice to the tenants around 3:00 p.m. on 16-December-2022.

Tenant's Position

24. Tenant1 confirms that they were given the termination notice as stated by the landlord.

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 tenants were 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. I find the tenants should have vacated the property by 27-December-2022.

Decision

28. The landlord's claim for an order for vacant possession succeeds.
29. The tenants shall vacate the premises immediately.
30. The tenants shall pay to the landlord 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. As this tribunal doesn't consider future rent; the tenants shall pay a daily rate for rent beginning 01-February-2023 of \$55.89, until such time as the landlords regain possession of the property. (Calculated as follows: \$1,700 x 12 months = \$20,400 a year, \$20,400 a year divided by 365 days = \$55.89 a day).

Summary of Decision

32. The tenant shall:
 - Pay the landlord \$1,125.00 as follows:
 - Rent \$1,050.00
 - Late fees 75.00
 - Total \$1,125.00
 - Pay a daily rate of rent beginning 01-February-2023 of \$55.89, 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.

February 3, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office