

Residential Tenancies Tribunal

Application 2023-No.0043 -NL

Decision 23-0043-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:17 a.m. on 13-February-2023.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" 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 I was unable to reach her by telephone at the start of the hearing; as there was no number provided. 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, in person on 17-January-2023. 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 her absence.
5. The landlord amended their application to decrease rent from \$55.00 to \$35.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$35.00
 - Late Fees \$75.00
 - Security deposit applied against monies owed \$562.50
 - 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 \$35.00

Relevant Submissions

9. The landlord reviewed the terms of the rental agreement. They entered a written monthly agreement with the tenant beginning 01-January-2020. The tenant pays \$825.00 rent 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 \$562.50 on 17-January-2020 and they are still in possession of the deposit.
10. The landlord stated that the tenant is frequently in rent arrears and that they have had numerous conversations about the outstanding balances. The landlord said that the tenant always assures them that the balance will be taken care of. The tenant receives income support and she pays the outstanding balance herself. In December, the rent paid by income support for January came in early, this put the tenant in a surplus position however, once rent came due on 01-January-2023, she had an outstanding balance once again. They submitted a rent ledger (LL#02) as follows:

2023-0043-NL
Rent ledger

Date	Action	Amount	total
7-Dec-22	outstanding balance	20.00	20.00
30-Dec-22	Subsidy payment	-395.00	-375.00
30-Dec-22	Subsidy payment	-395.00	-770.00
1-Jan-23	rent due	825.00	55.00
1-Feb-23	rent due	825.00	880.00
1-Feb-23	Subsidy payment	-395.00	485.00
1-Feb-23	Subsidy payment	-395.00	90.00
9-Feb-23	cheque	-55.00	35.00

11. The landlord is seeking full reimbursement of rent owed.

Analysis

12. 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 in full as shown in the ledger provided (LL#02). Following please note the ledger is amended to show a daily rate for February as this tribunal doesn't consider future rent.

Rent ledger				
2023-0043-NL				
Date		Action	Amount	total
7-Dec-22	outstanding balance		20.00	20.00
30-Dec-22	Subsidy payment		-395.00	-375.00
30-Dec-22	Subsidy payment		-395.00	-770.00
1-Jan-23	rent due		825.00	55.00
1-Feb-23	daily rate of rent due 13 x \$27.12		352.56	407.56
1-Feb-23	Subsidy payment		-395.00	12.56
1-Feb-23	Subsidy payment		-395.00	-382.44
9-Feb-23	cheque		-55.00	-437.44
Daily rate \$825 x 12 months = \$9,900				
\$9,900 divided by 365 = \$27.12 a day				

13. As of the hearing date, as this tribunal does not consider future rent, the tenant is not in rent arrears. To adhere to the rental agreement, should the tenant continue their tenancy, rent is to be paid in full on the first day of the month.

Decision

14. The landlord's claim for rent fails.

Issue 2: Late fees \$75.00

Relevant Submissions

15. The landlord's rent ledger shows that the tenant is in rent arrears for the month of January. Previous to this the tenant was in arrears from 02-October-2022 until 30-December-2022. Due to the ongoing issue with rent arrears the landlord is seeking the maximum allowed late fees.

Analysis

16. 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.

17. As the tenant was in arrears from 02-October – 30-December-2022 the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister. On 02-January-2023 the tenant's rent again fell into arrears and the late fees could have began once again. The landlord has only applied for \$75.00 and therefore they will be awarded this amount in late fees.

18. The late fees will be added to the rent ledger as follows:

Date	Action	Amount	total
7-Dec-22	outstanding balance	20.00	20.00
7-Dec-22	late fees (02 Oct – 06 Nov)	75.00	95.00
30-Dec-22	Subsidy payment	-395.00	-300.00
30-Dec-22	Subsidy payment	-395.00	-695.00
1-Jan-23	rent due	825.00	130.00
1-Feb-23	daily rate of rent due 13 x \$27.12	352.56	482.56
1-Feb-23	Subsidy payment	-395.00	87.56
1-Feb-23	Subsidy payment	-395.00	-307.44
9-Feb-23	cheque	-55.00	-362.44

Decision

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

Issue 3: Security deposit applied against monies owed \$562.50

20. As this tribunal doesn't consider future rent the tenant is not currently in arrears and therefore there is no money owed.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

21. 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-January-2023, with a termination date of 24-January-2022.
22. The landlord said that the Resident Manager delivered the notice in person to the tenant on 13-January-2023.

Analysis

23. 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.

.....

24. 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.

25. The tenant should have vacated the property by 24-January-2023.

Decision

26. The landlord's claim for an order for vacant possession succeeds.
27. The tenant shall vacate the premises immediately.
28. 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.
29. The tenant shall pay a daily rate for rent until the landlord regains possession of the apartment. Currently the tenant has a surplus of \$362.44 paragraph 18.
- Beginning 14-February the tenant shall pay a daily rate of \$27.12 (paragraph 12) after 13 days on 26-February-2023 ($13 \times \$27.12 = \352.56) the tenant will have \$9.88 remaining.
 - On 27-February-2023 the tenant's credit of \$9.88 will be applied to the rent, she will owe \$17.24 for this day of rent.
 - Then beginning 28-February-2023 she will pay a daily rate of \$27.12. This daily rate will be paid until the landlord regains possession of the apartment.

Issue 5: Hearing expenses reimbursed \$20.00

30. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

31. The tenant shall:
- Pay a daily rate of rent beginning 14-February-2023 of \$27.12, until such time as the landlords regain possession of the property.
 - Pay to the landlord \$20.00 for the cost of hearing expenses.
 - 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 24, 2023

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office