

Residential Tenancies Tribunal

Application 2023-No.0052 -NL Decision 23-0052-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:05 a.m. on 20-February-2023.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference. The 2nd respondent, [REDACTED], hereinafter referred to as "tenant2" did not attend. The tenant said that tenant2 moved from the rental and she would represent their party.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that he had served both tenants electronically on 08-February-2023. The tenant confirmed receipt of notification as stated by the landlord.
5. The landlord amended their application to increase late fees from \$50.00 to \$75.00 to reflect the current amount due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,600.00
 - Late fees \$75.00
 - Vacant possession of rental premises
 - Compensation for inconvenience \$1,600.00
 - Security deposit applied against monies owed \$1,200.00
 - 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, Section 19: Notice where failure to pay rent, as well as, Residential Tenancies Policy 12.

Issue 1: Rent \$1,600.00

Issue 2: Late fees \$75.00

Landlord's Position

9. The landlord submitted a rental agreement (LL#02) with the application. He entered a written term agreement with the tenants from 01-November-2022 until 31-March-2024. The tenants pay \$1,600.00 a month. The tenants moved in late September. 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 tenants paid a security deposit of \$1,200.00 on 28-September-2022 and he is still in possession of the deposit.
10. The landlord said that rent payments have been sporadic, he submitted a rent ledger (LL#03) as follows:

Rent ledger
2023-0052-NL

Date	Action	Amount	total
1-Nov-22	rent due	1600.00	1600.00
2-Nov-22	payment	-1000.00	600.00
2-Nov-22	payment	-600.00	0.00
1-Dec-22	rent due	1600.00	1600.00
8-Dec-22	payment	-800.00	800.00
16-Dec-22	payment	-800.00	0.00
1-Jan-23	rent due	1600.00	1600.00
25-Jan-23	payment	-600.00	1000.00
25-Jan-23	payment	-1000.00	0.00
1-Feb-23	rent daily rate 01- 20 Feb	1052.00	1052.00
18-Feb-23	payment	-800.00	252.00
19-Feb-23	payment	-800.00	-548.00

Daily rate: \$1,600 x 12 months = \$19,200.00 per year

\$19,200 per year divided by 365 days = \$52.60

\$52.60 x 20 days = \$1,052.00

11. Note: ledger is amended to show a daily rate for February as this tribunal doesn't consider future rent.

12. The landlord is seeking late fees for overdue rent be applied as appropriate. The ledger with late fees included is as follows:

Rent ledger 2023-0052-NL				
1-Nov-22	rent due		1600.00	1600.00
2-Nov-22		payment	-1000.00	600.00
2-Nov-22		payment	-600.00	0.00
2-Nov-22		first day late fee \$5	5.00	5.00
31-Dec-22		\$2 a day late fee 03-30 Nov	56.00	61.00
1-Dec-22	rent due		1600.00	1661.00
6-Dec-22		\$2 a day late fee 01-07 dec	14.00	1675.00
8-Dec-22		payment	-800.00	875.00
16-Dec-22		payment	-800.00	75.00
1-Jan-23	rent due		1600.00	1675.00
25-Jan-23		payment	-600.00	1075.00
25-Jan-23		payment	-1000.00	75.00
1-Feb-23	rent daily rate 01- 20 Feb		1052.00	1127.00
18-Feb-23		payment	-800.00	327.00
19-Feb-23		payment	-800.00	-473.00
Daily rate: \$1,600 x 12 months = \$19,200.00 per year				
\$19,200 per year divided by 365 days = \$52.60				
\$52.60 x 20 days = \$1,052.00				

13. The landlord states that there is no agreement for irregular payments, rent is due in full on the 1st day of the month.

Tenant's Position

14. The tenant confirms the rental agreement details.

15. The tenant said that tenant2 has moved out of the premises.

16. The tenant said that she had told the landlord that her account only allows a maximum withdrawal of \$1,000.00 a day and that rent would have to be in separate payments on separate days.

Analysis

17. Non-payment of rent is a violation of the rental agreement (LL#02). 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 the tenancy, rent is to be paid in full on the first day of the month in accordance with the rental agreement.

18. The landlord has been awarded the maximum amount of late fees as the tenant has consistently paid rent late. Late fees are added to a rent ledger and are considered rent owed. Late fees have been applied to the ledger in paragraph 12 in accordance with Section 15 of the *Residential Tenancies Act, 2018* which 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.*

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

20. The tenant is not currently in rent arrears, the landlord's claim for rent fails.

Decision

21. The landlord's claim for late fees succeeds in the amount of \$75.00 and has been applied to the rent ledger. The tenant does not currently owe rent and therefore the landlord's claim for rent fails.

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 11-January-2023, with a termination date of 25-January-2023.

23. The landlord said that he posted this notice to the tenant's door window and provided a picture (LL#05); he did this on 11-January-2023 and then followed up with an email on 13-January-2023.

24. Later, because the tenant made her rent payment on 25-January-2023, the landlord served the tenant with a second notice on 08-February-2023 with a termination date of 19-February-2023.

Tenant's Position

25. The tenant confirmed that the notice was posted to her window and she retrieved it the next day.

Analysis

26. 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.*

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

.....

(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.*

.....

27. The tenant had incurred late fees that were not paid. The outstanding late fees of \$75.00 are considered rent owed, as explained in paragraph 18. As these late fees have been applied, the tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, even though the tenant paid the rent due, the late fees are still outstanding and therefore 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.

28. As this notice is valid there is no requirement to assess the 2nd notice.
29. The tenant should have vacated the property by 25-January-2023.

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 21-February-2023 of \$52.60, as per paragraph 10, until such time as the landlords regain possession of the property; this payment will be deducted from her surplus rent until such time as those funds are exhausted.

Issue 4: Compensation for inconvenience \$1,600.00

Landlord's Position

34. The landlord states that the process of seeking rent payments, filing out termination notices, completing the work for the application process with Residential Tenancies as well as attending the hearing has been time consuming and he is seeking compensation for this process. He adds that often he spent long times on hold when making phone calls and sent numerous emails.
35. The landlord submitted a ledger (LL#09) for the inconvenience, as follows:

Date	Reason	Cost	total
1-Jan-23	phone calls / texts / emails	20.00	20.00
2-Jan-23	phone calls / texts / emails	20.00	40.00
3-Jan-23	phone calls / texts / emails	20.00	60.00
4-Jan-23	phone calls / texts / emails	20.00	80.00
5-Jan-23	phone calls / texts / emails	20.00	100.00
6-Jan-23	phone calls / texts / emails	20.00	120.00
7-Jan-23	phone calls / texts / emails	20.00	140.00
8-Jan-23	phone calls / texts / emails	20.00	160.00
9-Jan-23	phone calls / texts / emails	20.00	180.00
10-Jan-23	phone calls / texts / emails	20.00	200.00
11-Jan-23	preparation terminate early notice	350.00	550.00

11-Jan-23	hiring a com. of oaths serve documents x 3	550.00	1100.00
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36. Rent and late fees have been removed from the ledger as they were resolved in Issues 1 & 2. The cost of the application fee is also removed and will be considered in Issue 6.
37. The landlord did not submit receipts for his own time or other expenses.

Tenant's Position

38. The tenant questions the cost breakdown in the ledger. She queries why there is a \$20.00 charge to make a phone call or send an email. She doesn't understand the logic for the valuation of the ledger.

Analysis

39. The tenant's questions regarding the valuation of costs are valid. Not only is there no evidentiary proof in the form of receipts, the landlord has sought compensation for phone calls and texts on January 1, 2, 7 and 8, these are dates that our office is closed. He is also seeking \$350.00 to complete a landlord's notice to terminate early form, upon inspection of this form the landlord filled in 11 blanks inserting a total of 96 alphabetic or numeric characters and his signature.
40. Residential Tenancies Policy 12 states:

Costs an applicant may claim in order to file, serve, or provide supporting evidence for an Application for Dispute Resolution.

- Cost of hiring a process server to personally serve a Claim and Notice of Hearing;
- Cost of filing an application for mediation or adjudication of a dispute;
- Cost of personal service of Claim and Notice of Hearing by a landlord or tenant;
- Cost of serving a Claim and Notice of Hearing by registered mail, courier service or Express Post;
- Cost of copying, printing, evidence to support the application;
- Cost to subpoena a witness.

41. In accordance with the above limitations, the landlord did submit on 11-January-2023 a claim of \$550.00 to cover the cost of a Commissioner of Oaths to serve documents. However, the landlord's testimony as shown in paragraphs 4, 23 and 24 indicate that the landlord served the tenant's by email, or personally, not by a Commissioner of Oaths serving the documents.
42. The compensation sought by the landlord are outside of compensation awarded for the filing of a claim, he has also failed to show any proof of the expenses incurred and I find the claim is without merit.

43. The claim for compensation for inconvenience fails.

Decision

44. The claim for compensation for inconvenience fails.

Issue 5: Security deposit applied against monies owed \$1,200.00

Landlord's Position

45. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$1,200.00 on 28-September-2022 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

46. The landlord's claim for losses has not been successful, the landlord is awarded \$75.00 late fees however, and these fees are paid by the rent paid in February by the tenant. As this tribunal doesn't consider future rent the tenant will pay a daily rate of \$52.60 for rent from the day after the hearing 21-February-2023, until the day the landlord regains possession of his property. As the tenant is now paying a daily rate, on the day of the hearing her rent is paid in surplus of \$473.00 (paragraph 12). Further to this the landlord's claim for inconvenience fails and there is no payment awarded. He therefore shall not retain the Security deposit against these claims, as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

*14. (8) A security deposit is **not an asset of the landlord** but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.*

Decision

47. The landlords' claim to retain the security deposit against monies owed fails.

Issue 6: Hearing expenses reimbursed \$20.00

48. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#10) and pursuant to policy 12 a party may claim the filing fee as a hearing expense where they have received an award that is in an amount that is greater than the security deposit. As the landlord was awarded \$75.00 late fees and as the security deposit was \$1,200.00, the landlord's claim for the filing fee does not succeed.

Summary of Decision

49. The tenant shall:

- Pay a daily rate of rent beginning 21-February-2023 of \$52.60, to be initially deducted from the credit balance of \$473.00, until these funds are exhausted, this payment will be in effect until such time as the landlord regains possession of the property.
- Vacate the property immediately
- 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.

The landlord

- Will be awarded an Order of Possession.
- Has been credited late fees of \$75.00

February 24, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office