

Residential Tenancies Tribunal

Application 2023-0170-NL

Decision 23-0170-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:00 a.m. on 27-March-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. 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 with their application stating that they had served the tenant with notice of the hearing, by pre-paid registered mail ([REDACTED] [REDACTED]) on 7 March 2023. The registered mail tracking indicates that the tenant did not retrieve her mail. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. 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 the application to decrease outstanding rent from \$867 as per application to \$27.00 as per updated rental ledger. They are also seeking hearing expenses reimbursed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$27.00
 - Vacant possession of rental premises
 - Late fees \$75.00
 - Hearing fees \$34.90

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 19: Notice where failure to pay rent.

Issue 1: Rent \$27.00

Relevant Submissions

9. The landlord submitted a rental agreement with the application. They entered a written fixed agreement with the tenant beginning 01 April 2018. According to the agreement, the tenant initially payed \$790.00 a month. Current rent is \$910.00. 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 rental agreement confirms that the tenant paid a security deposit of \$395.00 on 16 March 2018. The landlord states that there is a balance of \$102.00 which includes a late fee of \$75.00. She submitted a rent ledger as follows:

Rent Ledger
2023-0170-NL

Date	Action	Amount	Balance
20-Oct-22		Payment	-810.00
1-Nov-22	Rent Due		910.00
4-Nov-22		Payment	-100.00
14-Nov-22	Late fees		29.00
17-Nov-22		Payment	-200.00
18-Nov-22		Payment	-300.00
29-Nov-22	Late fees		30.00
29-Nov-22		Payment	-349.00
1-Dec-22	Rent Due		20.00
14-Dec-22	Late fees		910.00
15-Dec-22		Payment	-500.00
30-Dec-22		Payment	-450.00
1-Jan-23	Rent Due		-4.00
16-Jan-23	Late fees		906.00
18-Jan-23		Payment	33.00
20-Jan-23		Payment	939.00
31-Jan-23	Late Fees		-400.00
1-Feb-23	Rent Due		339.00
2-Feb-23		Payment	30.00
8-Feb-23	Late Fees		929.00
23-Feb-23		Payment	12.00
1-Mar-23	daily rate Mar 1-27		942.00
5-Mar-23		Payment	-200.00
5-Mar-23		Payment	742.00
18-Mar-23		Payment	-349.78
		Payment	349.78
		Payment	-400.00
		Payment	349.78
		Payment	-350.00
			-0.22

Daily rate: \$910.00 x 12 months = \$10,920 a year
\$10,920 a year divided by 365 days = \$29.92 a day
27 days x \$29.92 = \$807.78

10. Note: Ledger is amended to show a daily rate for March as this tribunal do not consider future rent

Analysis

11. Non-payment of rent is a violation of the rental agreement. The landlord provided a rental ledger showing arrears in the amount of \$939.00 at the time that the termination notice was given on 16 January 2023 and the tenant was still in arrears on the move out date of 29 January 2023 in the amount of \$339.00. The tenant did not participate to show that she has paid the rent. I accept the landlord's testimony and evidence that the tenant did not pay rent on the dates owed as outlined in their rental agreement.
12. I find that the tenant do not owe any rent at this time as payments were made prior to the hearing date. The daily rate calculation shows a rental balance of -\$0.22. (See paragraph 9)

Decision

13. The landlord's claim for rent in the amount of \$27.00 does not succeed

Issue 2: Late fees \$75.00

14. The landlord included late fees in the rental ledger and all payments are up to date as per paragraph 9.

Analysis

15. 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.*

16. The landlord's calculations in the rental ledger show that rent has been paid up to the hearing date of 27 March 2023. Therefore, the maximum rate of \$75.00 is considered

paid in full. I find the landlord is not entitled to a payment of the maximum fee of \$75.00 set by the Minister.

Decision

17. The landlord's claim for late fees does not succeed in the amount of \$75.00

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

18. The landlord submitted a termination notice which is on a "Landlord's Notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 16 January 2023, with a termination date of 29 January 2023.

Analysis

19. 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.

20. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 29 January 2023 the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice.

21. I find the tenant should have vacated the property by 29 January 2023.

Decision

22. The landlord's claim for an order for vacant possession succeeds.

23. The tenant shall vacate the premises immediately
24. The tenant 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.
25. As this tribunal does not consider future rent, the tenants shall pay a daily rate for rent beginning 28 March 2023 in the amount of \$29.92 a day as outlined in paragraph 9, until such time as the landlord regains possession of the property.

Issue 4: Hearing Expenses

26. The landlord paid a fee of \$20.00 to file the application and they submitted a receipt showing that they were charged \$14.90 to serve the tenant with the application by registered mail. As the landlord's claim has been successful, the tenant shall pay the \$14.90 fee. With regards to the filing fee, Policy states that when a claim is less than the amount of the security deposit, then the applicant cannot seek refund of the \$20 filing fee. As such, the landlord's claim for hearing expenses succeeds in the amount of \$14.90.

Summary of Decision

27. The tenant shall:
 - Pay the landlord \$0.00 as follows:
 - Rent \$0.00
 - Late fees \$0.00
 - Hearing expenses \$14.90
 - **LESS: Partial Security Deposit (\$14.90)**
 - Total **\$0.00**
 - Pay a daily rate of rent beginning 28 March 2023 of \$29.92, 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.

March 28, 2023

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office