

Residential Tenancies Tribunal

Application 2023-0234-NL

Decision 23-0234-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:56 p.m. on 11-April-2023.
2. The applicant, [REDACTED] represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] represented by [REDACTED], hereinafter referred to as “the tenant” attended by teleconference. Also present was [REDACTED].

Preliminary Matters

4. The tenant was present at the hearing and was represented by [REDACTED]. An authorized representative form was not on file, however the tenant verbally gave authorization to have [REDACTED] speak on his behalf. Also in the room with the tenant and his authorized representative was [REDACTED]. I advised that he could stay and listen but he could not provide testimony as a witness. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of the hearing, by pre-paid registered mail ([REDACTED] on 22-March- 2023 (LL1). The tenant’s representative confirmed that the notice of hearing documents were picked up on 27-March-2023. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The landlord amended the application to increase outstanding rent from \$45 as per application to \$60.00. They are also seeking hearing expenses to be reimbursed.
6. The landlord did not submit a rental agreement with the application. The tenant moved into the apartment building in June 2009 and the landlord took over the building in 2010. Rent was \$865.00 per month due on the first of each month until 1-January-2023 when it was increased to \$885.00 per month. The tenant is responsible to pay his own utilities. A security deposit of \$423.75 was paid in December 2010 and is in the possession of the landlord.

Issues before the Tribunal

7. The landlord is seeking:
- Rent \$60.00
 - Vacant possession of rental premises
 - Late fees \$75.00
 - Hearing fees \$32.94

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. 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 \$60.00

Relevant Submissions

10. The landlord submitted a rental ledger as follows:

Rent Ledger
2023-0234-NL

Date	Action	Amount	Balance
1-Jan-23	Credit Balance		753.51
1-Jan-23	Rent due	885.00	-131.49
31-Jan-23	NL Housing Subsidy Payment	-676.00	544.51
1-Feb-23	Rent Due	885.00	-340.49
1-Feb-23	AES Payment	-97.00	-243.49
1-Feb-23	AES Payment	-97.00	-146.49
28-Feb-23	NL Housing Subsidy Payment	-676.00	529.51
1-March-23	Rent Due	885.00	-355.49
1-March-23	AES Subsidy Payment	-97.00	-258.49
1-March-23	AES Subsidy Payment	-97.00	-161.49
30-March-23	NL Housing Subsidy Payment	-676.00	514.51
1-April-23	Rent Due – daily rate April 1-11	320.11	194.44
3-April-23	AES Payment	-97.00	291.44
3-April-23	AES Payment	-97.00	388.44

Daily rate: \$885.00 x 12 months = \$10,620 a year
\$10,620 a year divided by 365 days = \$29.10 a day
11 days x \$29.10 = \$320.10

Analysis

11. The landlord provided a rental ledger showing arrears in the amount of \$176.49 as of 3-April-2023 (LL3), however the landlord amended that amount in the hearing to \$60. The hearing was heard on 11-April-2023 and future rent cannot be taken in consideration. Rental ledger (paragraph 10) was amended by adjudicator to take into effect a daily rate of rent for the period of 1-April to 11-April in the amount of \$320.11. On 3-April-2023 AES paid their subsidy amount of \$196.00 which puts the rental ledger in a credit balance of \$388.44.
12. I find that the tenant do not owe any rent up to the time the hearing was heard on 11-April-2023.

Decision

13. The landlord's claim for rent does not succeed

Issue 2: Late fees \$75.00

14. The landlord is seeking late fees in the amount of \$75.00

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 in arrears for different periods – see paragraph 10. Therefore, the maximum rate of \$75.00 should be paid to the landlord. I find the landlord is entitled to a payment of the maximum fee of \$75.00 as set by the Minister.

Decision

17. The landlord's claim for late fees does succeed.

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 (LL2). The notice is signed and dated for 22-February-2023, with a termination date of 5-March-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 landlord gave the tenant a Landlord’s Notice to Terminate Early – with Cause under section 19 for non-payment of rent. When the termination notice was issued on 22-February-2023, the tenant was in rental arrears in the amount of \$146.49 as per the rental ledger in paragraph 10. The tenant had until 5-March-2023 to pay the arrears or vacate the premises. On 28-February-2023, NL Housing issued a subsidy payment of \$676.00 which put the tenant in a credit balance. The rental ledger shows on 28-February-2023 that there was a credit balance of \$529.51 (LL3).

21. Section 19(2) of the Residential Tenancies Act states;

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.

22. The rental ledger shows a credit balance before the termination date of 5-March-2023 thus the termination notice became null and void at that time. I find that the tenant was not required to vacate the premises on 5-March-2023 under the termination notice that was given on 22-February-2023.

23. I find the tenant did not have to vacate the property by 5-March-2023.

Decision

24. The landlord's claim for an order for vacant possession does not succeed.

Issue 4: Hearing Expenses

25. The landlord paid a fee of \$20.00 to file the application and they submitted a receipt showing that they were charged \$12.94 to serve the tenant with the application by registered mail. As the landlord's claim has been partially successful, the tenant shall pay the \$12.94 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 \$12.94.

Summary of Decision

26. The tenant shall:

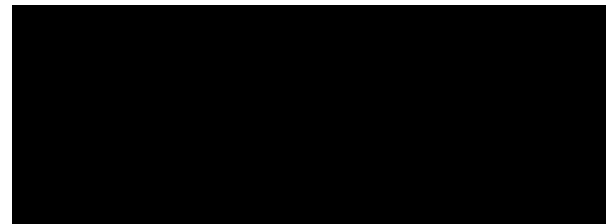
- Pay the landlord \$87.94 as follows
 - Rent\$0.00
 - Late fees\$75.00
 - Hearing expenses \$12.94
 - Total \$87.94

27. The landlord

- Will not be awarded an Order of Possession.

April 18, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office