

Residential Tenancies Tribunal

Application 2023-0307-NL

Decision 23-0307-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 11:10 a.m. on 16-May-2023.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord" attended by teleconference. Also present was [REDACTED]
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing on 12-April-2023 via prepaid registered mail [REDACTED]. The tenant confirmed receiving the envelope but could not recall what day. Canada Post tracking confirms delivery on 16-April-2023. This is good service.
5. The landlord states that there was a written fixed rental agreement in April 2020 which gets signed over to a new fixed agreement each year (LL#2). The tenant moved into the unit in April 2020 and rent is currently \$965.00 per month due on the first of each month. The tenant disagrees with the rent amount however the landlord submitted a copy of notice to increase rent with the tenant's signature attached (LL#3). The landlord states that a security deposit of \$450.00 was paid in March 2020 and is still in the company's possession.
6. The landlord amended the application to decrease outstanding rent from \$1945 as per application to \$1060.00 to include rent for the month of May less payments that were made in May. The landlord is also seeking hearing expenses reimbursed.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Rent \$1060.00
 - b. Late fees \$75.00
 - c. Security deposit applied against monies owed \$450.00

- d. Vacant possession of rental premises
- e. Hearing expenses \$34.90

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, Section 15: Fee for failure to pay rent and Section 14: Security Deposit.

Issue 1: Rent \$1060.00

Relevant Submissions

10. The landlord testified that rent was outstanding in the amount of \$1060 and in support of the claim submitted a written rental ledger (LL#4) as follows:

12/8/2022	12/2022	R-4361520	chk# EFT:3986369 - Payment Received - Thank You	0.00	0.00	0.00	0.00	925.00	0.00
1/1/2023	1/2023	C-4067218	lmt_res - Lease Rent Residential	925.00	0.00	0.00	925.00	0.00	925.00
1/10/2023	1/2023	R-4383830	chk# EFT:4087681 - Payment Received - Thank You	0.00	0.00	0.00	0.00	925.00	0.00
2/1/2023	2/2023	C-4090814	lmt_res - Lease Rent Residential	925.00	0.00	0.00	925.00	0.00	925.00
2/22/2023	2/2023	C-4107262	oth_nsf - Returned check charge	50.00	0.00	0.00	50.00	0.00	975.00
2/22/2023	2/2023	R-4411986	chk# EFT:4271354 - Payment Received - Thank You NSFed by ctrl# 4413345 Payment EFT:4271354 was rejected: 901 NSF(DEBIT ONLY)	0.00	0.00	0.00	0.00	925.00	50.00
2/22/2023	2/2023	R-4413346	chk# EFT:4271354 - NSF receipt Ctrl# 4411986 Payment EFT:4271354 was rejected: 901 NSF(DEBIT ONLY)	0.00	0.00	0.00	0.00	-925.00	975.00
2/28/2023	3/2023	C-4119483	oth_late - Late fees February	57.00	0.00	0.00	57.00	0.00	1,032.00
3/1/2023	3/2023	C-4107381	lmt_res - Lease Rent Residential	925.00	0.00	0.00	925.00	0.00	1,957.00
3/9/2023	3/2023	C-4119484	oth_late - Max late fees	18.00	0.00	0.00	18.00	0.00	1,975.00
3/15/2023	3/2023	C-4120168	oth_nsf - Returned check charge	50.00	0.00	0.00	50.00	0.00	2,025.00
3/15/2023	3/2023	C-4120658	oth_nsf - Reverse returned check charge	-50.00	0.00	0.00	-50.00	0.00	1,975.00
3/15/2023	3/2023	C-4120670	inv_othr - Credit of NSF fee (due to error)	-45.00	0.00	0.00	-45.00	0.00	1,930.00
3/15/2023	3/2023	R-4436127	chk# EFT:4276475 - Payment Received - Thank You	0.00	0.00	0.00	0.00	925.00	1,005.00
3/15/2023	3/2023	R-4436128	chk# EFT:4366832 - Payment Received - Thank You NSFed by ctrl# 4436635 Payment EFT:4366832 was rejected: 901 NSF(DEBIT ONLY)	0.00	0.00	0.00	0.00	925.00	80.00
3/15/2023	3/2023	R-4436635	chk# EFT:4366832 - NSF receipt Ctrl# 4436128 Payment EFT:4366832 was rejected: 901 NSF(DEBIT ONLY)	0.00	0.00	0.00	0.00	-925.00	1,005.00
3/31/2023	3/2023	R-4445616	chk# EFT:4373633 - Payment Received - Thank You NSFed by ctrl# 4454637 Payment EFT:4373633 was rejected: 901 NSF(DEBIT ONLY)	0.00	0.00	0.00	0.00	1,000.00	5.00
3/31/2023	4/2023	C-4145021	oth_nsf - Returned check charge	50.00	0.00	0.00	50.00	0.00	55.00
3/31/2023	4/2023	R-4454637	chk# EFT:4373633 - NSF receipt Ctrl# 4445616 Payment EFT:4373633 was rejected: 901 NSF(DEBIT ONLY)	0.00	0.00	0.00	0.00	-1,000.00	1,055.00
4/1/2023	4/2023	C-4140244	lmt_res - Lease Rent Residential	1,065.00	0.00	0.00	1,065.00	0.00	2,120.00
4/1/2023	4/2023	C-4146349	lmt_res - Adjust April/23 Rent	-100.00	0.00	0.00	-100.00	0.00	2,020.00
4/7/2023	4/2023	R-4456792	chk# EFT:4372446 - Payment Received - Thank You	0.00	0.00	0.00	0.00	925.00	1,095.00
5/1/2023	5/2023	C-4161513	lmt_res - Lease Rent Residential	965.00	0.00	0.00	965.00	0.00	2,060.00
5/4/2023	5/2023	R-4477205	chk# EFT:4551752 - Payment Received - Thank You	0.00	0.00	0.00	0.00	925.00	1,135.00

Analysis

11. Non-payment of rent is a violation of the rental agreement. The tenant did not dispute that he owed rent in the amount of \$1060.
12. The rental ledger is amended to show a daily rate for May as this tribunal doesn't consider future rent (see below). I find that the tenant is responsible for outstanding rent dating back as far as 1-February-2023 (last zero balance) to 30-April-2023 in the amount of \$1020.00 and rent from 1-May to 16-May in the amount of \$507.68 less a payment of \$925.00 that was received on 4-May-2023 for a total of \$602.68 and then a daily rate shall apply as calculated below:

January 10, 2023		Balance	\$0.00
February 1, 2023	Rent due	\$925.00	\$925.00
February 22, 2023		Payment	-\$925.00
February 22, 2023	NSF	\$925.00	\$925.00
February 22, 2023	Returned cheque charge	\$50.00	\$975.00
March 1, 2023	Rent due	\$925.00	\$1,900.00
March 15, 2023		Payment	-\$925.00
March 15, 2023	returned cheque charge reversed	-\$45.00	\$930.00
March 31, 2023		Payment	-\$1,000.00
March 31, 2023	NSF	\$1,000.00	\$930.00
March 31, 2023	returned cheque charge	\$50.00	\$980.00
April 1, 2023	Rent due	\$965.00	\$1,945.00
April 7, 2023		Payment	-\$925.00
May 1-16, 2023	Rent due	\$507.68	\$1,527.68
May 4, 2023		Payment	-\$925.00

Daily rate: $\$965 \times 12 \text{ months} = \11580
 $\$11580 \text{ divided by } 365 \text{ days} = \31.73 per day

Decision

13. The landlord's claim for rental arrears succeeds in the amount of \$602.68.

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 maximum rate of \$75.00 is allowable

Issue # 3: Security deposit applied to monies owed \$450.00

Analysis

17. The landlord's claim for losses has been successful as per paragraph 13, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

Decision

18. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$450.00.

Issue # 4: Vacant possession of the Rented Premises

Relevant Submissions:

19. The landlord submitted a termination notice under Section 19: failure to pay rent. The notice is signed and dated for 21-March-2023, with a termination date of 3-April-2023 (LL#5).

Analysis

20. Section 19 of the *Residential Tenancies Act, 2018* states:

a. Notice where failure to pay rent

b. 19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

i. (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

c. 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.

i. (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.

21. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 3-April-2023 the tenant was still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.

22. I find the tenant should have vacated the property by 3-April-2023.

Decision

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

24. The tenant shall vacate the premises immediately

25. 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.

26. As this tribunal does not consider future rent, the tenant shall pay a daily rate for rent beginning 17-May-2023 in the amount of \$31.73 a day as outlined in paragraph 12, until such time as the landlord regains possession of the property.

Issue # 5: Hearing Expenses

27. The landlord paid a fee of \$20.00 to file the application and \$14.90 to send document via prepaid registered mail. All receipts on file (LL#6). As the landlord's claim has been successful, the tenant shall pay the \$34.90. The landlord's claim for hearing expenses succeeds in the amount of \$34.90.

Summary of Decision

28. The tenant shall:

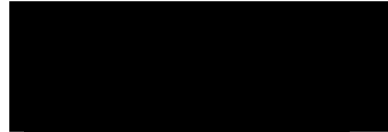
Pay the landlord \$262.58 as follows:

Rent	\$602.68
Late fees	75.00
Hearing expenses ...	34.90
Less: Security Deposit	(450.00)
Total	<u>\$262.58</u>

29. Pay a daily rate of rent beginning 17-May-2023 of \$31.73, until such time as the landlord regains possession of the property.
30. Vacate the property immediately
31. 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.
32. The landlord will be awarded an Order of Possession.

May 19, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office