

Residential Tenancies Tribunal

Application 2023-No.0365 -NL

Decision 23-0365-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 23-May-2023.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "tenant1 and tenant2" attended by teleconference.
4. The tenants presented a witness, [REDACTED] hereinafter referred to as "the witness."

Preliminary Matters

5. The landlords submitted an affidavit stating that they had served the tenants on 08-May-2023 by process server. Tenant2 confirms receipt of notice as stated.
6. The landlord amended their application to increase rent from \$2,470.00.00 to \$4,070.00 and late fees from \$75.00 to \$145.00, to reflect the current amounts owed.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent \$4,070.00
 - Security deposit applied against monies owed \$500.00
 - Vacant possession of rental premises
 - Hearing Expenses \$120.00

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 14: Security deposit, Section 15: Fee for failure to pay rent, Section 16: Rental increase, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$4,070.00

Landlords' Position

10. The landlords submitted a rental agreement (LL#02) with their application. They entered a written term agreement with the tenants from 01-June-2019 until 31-May-2020. They are currently in a monthly agreement. The tenants initially paid \$1,100.00 a month. There is a downstairs apartment and when that tenant moved, the tenants requested to rent the entire house. At that time, 01-November-2020, the rental increased to \$1,500.00. This rent increased again in December 2022 to \$1,600.00. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month, however, the parties agree that the tenants may pay \$800.00 around the 1st and 15th of each month. The landlord said that the tenant paid a security deposit of \$500.00 on 31-May-2019 and they are still in possession of the deposit.
11. The landlord submitted a rent ledger (LL#03)

Rent ledger 2023-0365-NL				
Date	Action		Amount	total
1-Sep-22	rent due		1500.00	1500.00
2-Sep-22		e-transfer	-750.00	750.00
17-Sep-22		e-transfer	-750.00	0.00
1-Oct-22	rent due		1500.00	1500.00
1-Oct-22		e-transfer	-750.00	750.00
15-Oct-22		e-transfer	-750.00	0.00
1-Nov-22	rent due		1500.00	1500.00
1-Nov-22		e-transfer	-750.00	750.00
18-Nov-22		e-transfer	-750.00	0.00
30-Nov-22		e-transfer	-800.00	-800.00
1-Dec-22	rent due		1600.00	800.00
16-Dec-22		e-transfer	-800.00	0.00
31-Dec-22		e-transfer	-650.00	-650.00
1-Jan-23	rent due		1600.00	950.00
5-Jan-23		e-transfer	-170.00	780.00
5-Jan-23	late fees		20.00	800.00
16-Jan-23		e-transfer	-800.00	0.00
1-Feb-23	rent due		1600.00	1600.00
3-Feb-23		e-transfer	-800.00	800.00
21-Feb-23		e-transfer	-800.00	0.00

1-Mar-23	rent due		1600.00	1600.00
2-Mar-23		e-transfer	-700.00	900.00
2-Mar-23		e-transfer	-100.00	800.00
15-Mar-23	late fees		37.00	837.00
1-Apr-23	rent due		1600.00	2437.00
1-Apr-23	late fees		33.00	2470.00
1-May-23	rent due		1600.00	4070.00

12. Landlord2 said that the tenants always paid by e-transfer. He states that he gave the tenants a three month notice (LL#04) the end of March and they stopped paying rent. He disputes he told them to pay by cash and states that he hasn't received rent after 02-March-2023.

Tenants' Position

13. The tenants confirmed the details of the rental agreement. Tenant2 stated that the rent increased in December 2022 and that they only received notice of that increase in October 2022, he said he told landlord2 that they were supposed to give 6 months' notice but they were only given 2 months.
14. Tenant1 said that landlord2 told her that they wouldn't accept e-transfer payments for rent going forward and that they would have to pay by cash. She said he refused to provide her receipts. She said that they gave them the three month notice and then they asked for rent to be paid in cash.
15. Tenant1 introduced the witness who stated that she was living with the tenants from 12-February-2023 until 03-May-2023. She confirms that she was there each time when they paid rent to the landlord.
16. Tenant1 said that they have rent paid up to the middle of May. She said that when they received notification of the hearing they stopped paying rent, at that time, and they still owe the mid-May payment.

Analysis

17. In these proceedings the standard of proof is referred to as the balance of probabilities which means it has to be established that the account of events are more likely than not to have happened. When faced with a "he said she said" situation, establishing whose side is true can be difficult. When a landlord claims for rent owed, the burden of proof is that of the landlord. They have supplied a rent ledger, which satisfies that burden. The tenants have made a defense claim they have failed to support; typically proof of payment is shown by receipts. The tenants acknowledge that they didn't receive receipts and therefore they have not proven their case. I therefore accept the landlord's version of events and find that rent has not been paid.

18. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's rent ledger (LL#03) however there are changes required to show the amount currently due.
19. The tenants had stated and the ledger shows that rent was increased in December from \$1,500.00 to \$1,600.00. The tenants were given 2 months' notice of the increase, as stated by the tenants, this is in violation of the Act. Section 32 of the Residential Tenancies Act, 2018, states:

Rental increase

16. (1) Notwithstanding another Act, agreement, declaration, waiver or statement to the contrary, a landlord shall not increase the amount of rent payable by a tenant,

- (a) where the residential premises is rented from week to week or month to month, more than once in a 12 month period;***
- (b) where the residential premises is rented for a fixed term, during the term of the rental agreement; or***
- (c) where a tenant continues to use or occupy the residential premises after a fixed term has expired, more than once in a 12 month period.***

(2) Notwithstanding subsection (1), a landlord shall not increase the amount of rent payable by a tenant during the 12 month period immediately following the commencement of the rental agreement.

(3) Where a landlord increases the amount of rent payable by a tenant, the increase shall be effective on the first day of a rental period, and the landlord shall give the tenant written notice of the increase

- (a) not less than 8 weeks before the effective date of the increase where the residential premises is rented from week to week; and***
- (b) not less than 6 months before the effective date of the increase where the residential premises is rented from month to month or for a fixed term.***

.....

As the landlord did not provide appropriate notice to the tenants of the increase, this increase will be removed.

20. Additionally, late fees will now be removed and applied once the tenants stopped paying rent after 02-March-2023. The landlords stated in paragraph 10 that they had an agreement with the tenants that they would pay rent around the 1st and 15th of the month, indicating that they were acceptable to payments being flexible. In accordance with their agreement, the tenants should be given a reasonable amount of time before late fees are applied.
21. Finally, the ledger has been amended to show a daily rate for May, up to and including the day of the hearing, as this tribunal does not consider future rent.

22. The amended ledger is as follows:

Rent ledger 2023-0365-NL

Date	Action	Amount	total
1-Sep-22	rent due	1500.00	1500.00
2-Sep-22	e-transfer	-750.00	750.00
17-Sep-22	e-transfer	-750.00	0.00
1-Oct-22	rent due	1500.00	1500.00
1-Oct-22	e-transfer	-750.00	750.00
15-Oct-22	e-transfer	-750.00	0.00
1-Nov-22	rent due	1500.00	1500.00
1-Nov-22	e-transfer	-750.00	750.00
18-Nov-22	e-transfer	-750.00	0.00
30-Nov-22	e-transfer	-800.00	-800.00
1-Dec-22	rent due	1500.00	700.00
16-Dec-22	e-transfer	-800.00	-100.00
31-Dec-22	e-transfer	-650.00	-750.00
1-Jan-23	rent due	1500.00	750.00
5-Jan-23	e-transfer	-170.00	580.00
16-Jan-23	e-transfer	-800.00	-220.00
1-Feb-23	rent due	1500.00	1280.00
3-Feb-23	e-transfer	-800.00	480.00
21-Feb-23	e-transfer	-800.00	-320.00
1-Mar-23	rent due	1500.00	1180.00
2-Mar-23	e-transfer	-700.00	480.00
2-Mar-23	e-transfer	-100.00	380.00
1-Apr-23	rent due	1500.00	1880.00
1-May-23	daily rate 01-23 May	1134.36	3014.36

Daily rate: $1,500 \times 12 \text{ months} = \$18,000$

$\$18,000.00 \text{ divided by } 365 \text{ days} = \49.32

$\$49.32 \times 23 \text{ days} = \$1,134.36$

23. The tenants shall pay the landlords the rent owed totaling \$3,014.36.

Decision

24. The landlords' claim for rent succeeds in the amount of \$3,014.36.

Issue 2: Late fees \$75.00

Relevant Submissions

25. The landlords have proven in paragraph 22 that the tenants have been in rental arrears as of 15-March-2023 and are seeking the maximum allowed late fees.

Analysis

26. 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.

27. As the tenants have been arrears since 15-March-2023 the landlords are entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

28. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 3: Security deposit applied against monies owed \$500.00

Relevant Submissions

29. The landlords stated in paragraph 10 that the tenant paid a security deposit of \$500.00 on 31-May-2019 and they are still in possession of the deposit.

Analysis

30. The landlords' claim for losses has been successful, paragraphs 24 and 28, 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

31. The landlords' shall retain the security deposit against monies owed in the amount of \$500.00.

Issue 4: Vacant Possession of the Rental Premises

Landlords' Position

32. The landlords submitted a termination notice (LL#05). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 09-April-2023 with a termination date of 20-April-2023.
33. Landlord2 said that it was posted to the door on 09-April-2023.

Tenants' Position

34. Tenant1 said that the notice wasn't posted to the door. She said that the three month notice was delivered by landlord2.
35. Tenant1 said that the only notice that was posted to the door was when the landlords had the carpenter and someone coming in for a viewing.
36. Tenant1 said that it wasn't until they started reading through their package that they realized that the hearing was for this notice and not for the three month notice.

Analysis

37. 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.

.....

38. As both parties have agreed that the landlord has posted notices on the door in the past, I accept that he posted this notice on the door. The tenants were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenants were still in arrears. The termination notice meets the requirements of the Act and is a valid notice.

39. The tenants should have vacated the property by 20-April-2023.

Decision

40. The landlords' claim for an order for vacant possession succeeds.

41. The tenants shall vacate the premises immediately.

42. The tenants 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.
43. The tenants shall pay a daily rate for rent beginning 25-May-2023 of \$49.32, as per the table in paragraph 22, until such time as the landlords regain possession of the property.

Issue 5: Hearing expenses reimbursed \$120.00

44. The landlords are seeking the cost of the process server and the application fee totaling \$120.00. The tenants are seeking cost for missed work. As the landlords' claim has been successful and as they only submitted the receipt for \$20.00 for the cost of the hearing (LL#06); pursuant to policy 12.01, they are entitled to reimbursement of that cost from the tenant.

Summary of Decision

45. The tenants shall:
- Pay the landlords \$2,609.36 as follows:
 - Rent \$3,014.36
 - Hearing expenses 20.00
 - Late fees 75.00
 - Security deposit applied (500.00)
 - Total \$2,609.36
 - Pay a daily rate of rent beginning 25-May-2023 of \$49.32, until such time as the landlords regain possession of the property.
 - 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 landlords

- Will be awarded an Order of Possession.
- Shall retain the security deposit of \$500.00.

June 05, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office