

Residential Tenancies Tribunal

Application 2023-0395-NL

Decision 23-0395-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:42 p.m. on 24-May-2023.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord" attended by teleconference. Also present was [REDACTED]
3. The respondents, [REDACTED] (tenant 1), [REDACTED] (co-signer) and [REDACTED] (tenant 2), hereinafter referred to as "the tenants" attended by teleconference.

Preliminary Matters

4. Tenant 1 attended for approximately 10 minutes, at which time she left the hearing to return to work and gave verbal authorization for the co-signer to speak on her behalf.
5. The landlord states that there is a written fixed rental agreement which commenced on 1-May-2022 (LL#1). Rent was \$885.00 until 1-May-2023 when it was increased to \$1005.00 per month, due on the first day of each month. The landlord states that a security deposit of \$663.75 was paid on 1-May-2022 and is still in the company's possession.
6. The landlord submitted 2 separate affidavits (LL#2) with their application stating that they served the tenants electronically with the notice of hearing on 5-May-2023 via emails; [REDACTED] and [REDACTED]. Both tenants confirmed receiving the documents on that day. This is good service.
7. The landlord amended the application to increase rent from \$885.00 as per the application to \$1890.00 to include outstanding rent for the month of May. The landlord also amended application to increase late fees from \$51.00 to the maximum of \$75.00. The landlord is seeking hearing expenses reimbursed.

Issues before the Tribunal

8. The landlord is seeking:
 - a. Rent paid \$1890.00
 - b. Vacant possession of rental premises
 - c. Late fees \$75.00
 - d. Hearing expenses \$20.00
 - e. Security deposit applied (\$663.75)

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. 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 14: Security deposit and Section 15: Late fees.

Issue 1: Rent Paid \$1890.00

Relevant Submissions

11. The landlord testified that rent was outstanding in the amount of \$1890.00 and in support of the claim submitted a rental ledger (LL#3) as follows:

3/5/2023	3/2023	R-4433586	chkr# CMD:4357983 - Payment Received - Thank You	0.00	0.00	0.00	0.00	885.00	0.00
4/1/2023	4/2023	C-4140217	Int_res - Lease Rent Residential	885.00	0.00	0.00	885.00	0.00	885.00
4/10/2023	4/2023	C-4146613	oth_late - Other Late Fees	21.00	0.00	0.00	21.00	0.00	906.00
4/25/2023	4/2023	C-4152064	oth_late - Other Late Fees	30.00	0.00	0.00	30.00	0.00	936.00
5/1/2023	5/2023	C-4161485	Int_res - Lease Rent Residential	1,005.00	0.00	0.00	1,005.00	0.00	1,941.00
5/23/2023	5/2023	C-4169401	oth_late - Other Late Fee - MAX	24.00	0.00	0.00	24.00	0.00	1,965.00

12. The tenants did not dispute the amount of outstanding rent.

Analysis

13. Non-payment of rent is a violation of the rental agreement. The landlord stated that there is rental arrears in the amount of \$1890.00 once outstanding rent for the month of May was added, taking into account the rental increase in May. A landlord's termination notice with cause was given to the tenants on 11-April-2023 under section 19; failure to pay rent with a termination date of 24-April-2023 (LL#4). Tenant 2 confirmed receiving the notice on that date. This is a good notice.
14. 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 tenants are responsible for outstanding rent dating back as far as 1-April-2023 (last zero balance) to 30-April-2023 in the amount of \$885.00 and rent from 1-May to 24-May in the amount of \$792.96 for a total of \$1677.96 and then a daily rate shall apply as calculated below:

March 5, 2023		Balance	\$0.00
April 1, 2023	Rent due	\$885.00	\$885.00
May 1 -24, 2023	Rent due	\$792.96	\$1,677.96

Daily rate: \$1005 x 12 = \$12060
\$12060 / 365 days = \$33.04 per day

15. I find the tenant's shall pay the landlord \$1,677.96 in outstanding rent for the period of 1-April to 24-May and then a daily rate of \$33.04 shall be applied.

Decision

16. The landlord's claim for rental arrears succeeds.

Issue # 2: Vacant Possession of Rented Premises

Relevant submissions:

17. The landlord submitted a termination Notice under Section 19; failure to pay rent. The notice was signed and dated for 11-April-2023, with a termination date of 24-April-2023 (LL#4).

Analysis

18. 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.

19. The tenant's were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 24-April-2023 the tenant's were still in arrears. The termination notice meets the requirements of the Act and is a valid notice.

20. I find the tenants should have vacated the premises by 24-April-2023.

Decision

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

22. The tenant's shall vacate the premises immediately

23. The tenant's 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.

24. As this tribunal does not consider future rent, the tenant's shall pay a daily rate for rent beginning 25-May-2023 in the amount of \$33.04 a day as outlined in paragraph 14, until such time as the landlord regains possession of the property.

Issue # 3: Late fees \$75.00

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

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

Decision

27. The maximum rate of \$75.00 is allowable.

Issue # 4: Security deposit applied to monies owed \$663.75

Analysis

28. The landlord's claim for losses has been successful as per paragraph 16, 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

29. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$663.75.

Hearing Expenses

30. The landlord paid an application fee of \$20.00. The landlord submitted a copy of the application receipt (LL#5). As the landlord's claim has been successful, the tenant's shall pay the \$20.00. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

31. The tenant's shall:

Pay the landlord \$1109.21 as follows:

Rent	\$1677.96
Late fees	75.00
Hearing expenses	20.00
Less: Security deposit	<u>(663.75)</u>
Total	<u>\$1109.21</u>

32. Vacate the property immediately

33. 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.

34. The landlord will be awarded an Order of Possession.

June 1, 2023

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office