

Residential Tenancies Tribunal

Application 2023-0455-NL

Decision 23-0455-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:43 a.m. on 21-June-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 him 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 he has been properly served. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of hearing on 17-April-2023 by emailing it to; [REDACTED] (LL#1). The landlord submitted proof that the email was delivered and responded to by the tenant (LL#2). 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 his absence.
5. The landlord states that there was a written fixed rental agreement which commenced on 1-November-2018, which is now a month to month agreement (LL#3). Rent was \$750.00 at the beginning of the tenancy but currently is \$875.00, due on the first day of each month. The landlord states that a security deposit of \$600.00 was paid on 30-November-2018 and is still in the company's possession.

6. The landlord amended the application to increase rent from \$850.00 as per the application to \$950.00 to include outstanding rent for the month of June. The landlord is seeking hearing expenses reimbursed.

Issues before the Tribunal

7. The landlord is seeking:
- Rent paid \$950.00
 - Late fees \$75.00
 - Vacant possession of rental premises
 - Hearing expenses \$20.00
 - Security deposit applied \$600.00

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 19: Notice where failure to pay rent, Section 14: Security deposit and Section 15: Late fees.

Issue 1: Rent Paid \$950.00

Relevant Submissions

10. The landlord testified that rent was outstanding in the amount of \$950.00 and in support of the claim submitted a rental ledger (LL#4) as follows:

12/2/2022	12/2022		chk# M/O -	0.00	0.00	0.00	0.00	900.00	0.00
1/1/2023	1/2023		rentres - Residential rent	875.00	0.00	0.00	875.00	0.00	875.00
2/1/2023	2/2023		rentres - Residential rent	875.00	0.00	0.00	875.00	0.00	1,750.00
2/4/2023	2/2023		chk# M/O -	0.00	0.00	0.00	0.00	900.00	850.00
3/1/2023	3/2023		rentres - Residential rent	875.00	0.00	0.00	875.00	0.00	1,725.00
3/9/2023	3/2023			0.00	0.00	0.00	0.00	875.00	850.00
3/27/2023	3/2023			0.00	0.00	0.00	0.00	700.00	150.00
4/1/2023	4/2023		rentres - Residential rent	875.00	0.00	0.00	875.00	0.00	1,025.00
4/5/2023	4/2023		chk# M/O -	0.00	0.00	0.00	0.00	650.00	375.00
4/30/2023	4/2023		late - Late Fees	75.00	0.00	0.00	75.00	0.00	450.00
5/1/2023	5/2023		rentres - Residential rent	875.00	0.00	0.00	875.00	0.00	1,325.00
5/5/2023	5/2023		chk# M/O -	0.00	0.00	0.00	0.00	475.00	850.00

Analysis

11. Non-payment of rent is a violation of the rental agreement. The landlord stated that there is rental arrears in the amount of \$950.00 once outstanding rent for the month of June was added, and a payment of \$700.00 was received on 12-June-2023. A landlord's termination notice with cause was given to the tenant on 25-April-2023 under section 19; failure to pay rent with a termination date of 6-May-2023 (LL#5). This is a good notice.

12. The rental ledger is amended to show a daily rate for June 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-January-2023 (last zero balance) to 31-May-2023 in the amount of \$775.00 and rent from 1-June to 21-June in the amount of \$604.17 less a payment on 12-June-2023 of \$700.00 for a total of \$679.17 and then a daily rate shall apply as calculated below:

2023-0455-NL			
Date	Action	Amount	Total
December 31, 2022	Balance		\$0.00
January 1, 2023	Rent due	\$875.00	\$875.00
February 1, 2023	Rent due	\$875.00	\$1,750.00
February 4, 2023	Payment	-\$900.00	\$850.00
March 1, 2023	Rent due	\$875.00	\$1,725.00
March 9, 2023	Payment	-\$875.00	\$850.00
March 27, 2023	Payment	-\$700.00	\$150.00
April 1, 2023	Rent due	\$875.00	\$1,025.00
April 5, 2023	Payment	-\$650.00	\$375.00
May 1, 2023	Rent due	\$875.00	\$1,250.00
May 5, 2023	Payment	-\$475.00	\$775.00
June 1-21, 2023	Rent due	\$604.17	\$1,379.17
June 12, 2023	Payment	-\$700.00	\$679.17

Daily rate: $\$875 \times 12 = \10500
 $\$10500 / 365 \text{ days} = \28.77 per day

13. I find the tenant shall pay the landlord \$679.17 in outstanding rent for the period of 1-January to 21-June and then a daily rate of \$28.77 shall be applied.

Decision

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

Issue # 2: Late fees \$75.00

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

Analysis

16. 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

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

Issue # 3: Vacant Possession of Rented Premises

Relevant submissions:

18. The landlord submitted a termination Notice under Section 19; failure to pay rent. The notice was signed and dated for 25-April-2023, with a termination date of 6-May-2023 (LL#5).

Analysis

19. 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.

20. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 6-May-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 premises by 6-May-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 tenant shall pay a daily rate for rent beginning 22-June-2023 in the amount of \$28.77 a day as outlined in paragraph 12, until such time as the landlord regains possession of the property.

Issue # 4: Security deposit applied to monies owed \$600.00

Analysis

26. 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.

27. The landlord testified that when the tenancy commenced in 2018, rent was \$750.00 per month and the tenant paid a security deposit of \$600 which is greater than the maximum 75% allowable for a security deposit.

28. Section 14.(1) (c) of the *Residential Tenancies Act, 2018* states;

14.(1) A landlord shall not demand from a tenant a security deposit that is

(c) more than $\frac{3}{4}$ of the amount of rent that would be payable for the first month if rent was divided into a monthly payment where the residential premises is rented for a fixed term.

29. I find that the landlord overcharged the tenant for the security deposit by \$37.50 ($\frac{3}{4} \times \$750.00 = \562.50). For the purpose of this decision and the allocation of funds, \$37.50 will be considered rent paid and \$562.50 will be considered security deposit paid.

Decision

30. The landlords' claim to retain the security deposit against monies owed succeeds.

Hearing Expenses

31. The landlord paid an application fee of \$20.00. The landlord submitted a copy of the application receipt (LL#6). As the landlord's claim has been successful, the tenant shall pay the \$20.00. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

32. The tenant shall:

Pay the landlord \$174.17 as follows:

Rent	\$679.17
Late fees	75.00
Hearing expenses	20.00
Less: Security deposit	(562.50)
Less: rent paid	<u>(37.50)</u>
Total	<u>\$174.17</u>

33. Orders that the tenant pay a daily rate of rent beginning 22-June-2023 of \$28.77, until such time as the landlord regain possession of the property.
34. Vacate the property immediately
35. 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.
36. The landlord will be awarded an Order of Possession.

July 5, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office