



## Residential Tenancies Tribunal

Application 2023-No.0495-NL

Decision 23-0495-00

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 11:11 a.m. on 05-July-2022.
2. The applicant [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.

### Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that they served the tenant with notice of the hearing by pre-paid registered mail on 12-June-2023 and the tracking number shows that the package was delivered on 14-June-2023. The tenant confirms receipt of notification as stated by the landlord.
5. The landlord amended their application to increase rent from \$955.00 to \$1,617.67 to reflect the current amount of rent due.

### Issues before the Tribunal

6. The landlord is seeking:
  - Rent \$1,617.67
  - Late fees \$75.00
  - Vacant possession of rental premises
  - Hearing Expenses \$20.00

### Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

8. 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, and Section 19: Notice where failure to pay rent.

### Issue 1: Rent \$1,617.67

#### Landlord's Position

9. The landlord stated they entered a written term agreement with the tenant from 01-November-2020 until 31-October-2021. They are currently in a monthly agreement. The tenant pays \$955.00 a month. The rental period is from the 1<sup>st</sup> day of the month until the last day; rent is due the 1<sup>st</sup> day of each month. The landlord said that the tenant does not have a security deposit.
10. The landlord explained that the tenant had fallen into rent arrears and they had a previous mediated agreement [REDACTED], the conditions were not met which resulted in an Order of Possession. The tenant arranged to pay the Sherriff's fees, as well as the overdue rent and they continued with their rental agreement. The landlord said that the tenant has since fallen into rent arrears again and hasn't paid rent since 01-May-2023.
11. The landlord submitted an email from [REDACTED] (LL#03) agreeing to assist with the tenant's rent. The email promises a payment of \$260.50 and another payment of \$986.83. The email confirms that beginning 15-July-2023 they will pay \$955.00 per month for rent on behalf of the tenant. The landlord has not received the payments to date, however he accepts that the payments will be made and credits the tenants rent ledger with same.
12. He submitted a rent ledger (LL#02), as follows:

Rent ledger  
2023-0495-NL

Date	Action	Amount	total
1-May-23	Rent due	955.00	955.00
1-Jun-23	Rent due	955.00	1910.00
1-Jul-23	rent due daily rate 01-05 July-23	157.00	2067.00
5-Jul-23	[REDACTED] promised payment	-260.50	1806.50
5-Jul-23	[REDACTED] promised payment	-986.83	819.67

Daily rate: \$955.00 x 12 months - \$11,460.00 per year  
 \$11,460.00 divided by 365 days = \$31.40 a day  
 5 days x \$31.40 = \$157.00

13. Note: ledger is amended to show a daily rate for July as this tribunal doesn't consider future rent.

14. The landlord is seeking full compensation for rent owed.

#### Tenant's Position

15. The tenant confirms the details of the rental agreement as stated by the landlord, he however clarifies that he moved in on 20-October-2020 before the term started.
16. The tenant states he has been unwell and confirms he has been unable to pay his rent. He assures the tribunal that he will be able to pay this debt by the end of the month.

#### **Analysis**

17. Both parties confirm that this rent is owing. Non-payment of rent is a violation of the rental agreement. There is no dispute and rent is owed totaling \$819.67.
18. The tenant shall pay the landlord the rent owed totaling \$819.67.

#### **Decision**

19. The landlord's claim for rent succeeds in the amount of \$819.67.

#### **Issue 2: Late fees \$75.00**

#### Relevant Submissions

20. The landlord has proven, paragraph 19, that the tenant has been in rental arrears as of 02-May-2023 and is seeking the maximum allowed late fees.

#### **Analysis**

21. 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.*

22. As the tenant has been arrears since 02-May-2023 the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

### **Decision**

23. The landlord's claim for late fees succeeds in the amount of \$75.00.

### **Issue 3: Vacant Possession of the Rental Premises**

#### **Landlord's Position**

24. The landlord submitted a termination notice (LL#04). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 25-May-2023 with a termination date of 05-June-2023.
25. The landlord said that the Resident Manager placed the notice under the tenant's door on 25-May-2023.

#### **Tenant's Position**

26. The tenant confirms receipt of notification as stated.

### **Analysis**

27. 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.*

.....

28. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.
29. The tenant should have vacated the property by 05-June 2023.

#### **Decision**

30. The landlord's claim for an order for vacant possession succeeds.
31. The tenant shall vacate the premises immediately.
32. The tenant 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.
33. The tenant shall pay a daily rate for rent beginning 05-July-2023 of \$31.40, as per paragraph 12, until such time as the landlords regain possession of the property.

#### **Issue 4: Hearing expenses reimbursed \$20.00**

34. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

## Summary of Decision

### 35. The tenant shall:

- Pay the landlord \$914.67 as follows:
  - Rent ..... \$819.67
  - Late fees..... 75.00
  - Hearing expenses..... 20.00
    - Total..... \$914.67
- Pay a daily rate of rent beginning 06-July-2023 of \$31.40 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 landlord

- Will be awarded an Order of Possession.

July 12, 2023

Date



Residential Tenancies Office