

## Residential Tenancies Tribunal

Application 2023-0562-NL

Decision 23-0562-00

Michael Reddy  
Adjudicator

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### Introduction

1. The hearing was called at 1:45 PM on 27 July 2023 by teleconference.
2. The applicant, Northview represented by [REDACTED] hereafter referred to as the landlord, participated in the hearing. The respondent, [REDACTED] hereafter referred to as the tenant, did not participate in the hearing.
3. The details of the claim were presented as a written term rental agreement with rent set at \$940.00 per month and due on the 1<sup>st</sup> of each month. There was no evidence offered regarding the security deposit. The landlord issued a termination notice dated 9 May 2023 for the intended termination date of 22 May 2023 under Section 19 of the *Residential Tenancies Act, 2018*.
4. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that her account of events are more likely than not to have happened.

### Preliminary Matters

5. The landlord amended the application at the onset of the hearing to include rent that has come due since the application was filed for June 2023. The new rental amount owing is \$1,267.41 up to and including 27 July 2023.
6. The tenant [REDACTED] was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.

- a. Rule 29.05(2)(a) states *a respondent 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/she has been properly served*.

The affidavit submitted by the landlord shows the tenant was initially served by prepaid registered mail on 21 June 2023 with a notice of hearing for 19 July 2023.

Both the landlord and tenant started the scheduled teleconference hearing on 19 July 2023 which resulted in both parties wishing to participate in mediation. Both parties also agreed for a hearing to be scheduled on 27 July 2023. Both parties were issued with a Notice of Reschedule Hearing via e-mail on 19 July 2023, which indicates the date, time and conference hearing information scheduled on 27 July 2023.

A telephone call was placed to the tenant number on file [REDACTED] and an unidentified respondent suggested this was not the contact number for the tenant, nor was the tenant available at this telephone number. As the tenant was properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

#### **Issues before the Tribunal**

7. The landlord is seeking the following:

- a) Payment of rent owing **\$1,199.41**
- b) Vacant possession of the rented premises
- c) Late fees **\$48.00**
- d) Hearing expenses **\$20.00**

#### **Legislation and Policy**

8. The jurisdiction of the Director of Residential Tenancies as outlined in the *Residential Tenancies Act, 2018*, Sections 46 and 47.
9. Also relevant and considered in this case are Sections 15, 19, 34 and 35 of the *Act*; Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*; and, rule 29 of the *Rules of the Supreme Court, 1986*.

**Issue 1: Rent Owing- \$1,199.41**Landlord Position

10. The landlord stated that the tenant entered into a written rental agreement with the landlord, commencing on December 1, 2020 for a 12 month fixed term. The agreed rent is set at \$940.00 per month and due the 1<sup>st</sup> day of each month. The landlord testified there were no records indicating the security deposit was paid by the tenant.
11. The landlord explained initially, there were two tenants in the rental agreement, however in April 2022, a Leaseholder Addendum Agreement was agreed to by the tenants and landlord, which resulted in [REDACTED] being the only identified tenant at [REDACTED]
12. The landlord testified there has been concerns with full rental payments with the tenant since March 2023. As such, the landlord issued a termination notice (**Exhibit L # 1**) dated 9 May 2023 for the intended date of 22 May 2023 (Section 19). The evidence indicates the tenant was served on 11 May 2023. The landlord testified that rent was outstanding and submitted rental records to support the claim for rent owing (**Exhibit L # 2**). The landlord advised the tenant continues to reside in the residence.

**Analysis**

13. I have reviewed the testimony and evidence of the landlord in this matter. There is one issue that needs to be addressed: (i) is the rent that is being claimed by the landlord owed by the tenant.
14. The landlord is seeking an order for the payment of the rent in the full amount.
15. In addition to the evidence presented at the hearing by the landlord, a review of the file (2023-0562-NL) reveals both the tenant and landlord requested mediation services in an attempt to deal with the issue of rent owed by the tenant.
16. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. As indicated within the updated rent ledger, on 1 March 2023, there was a zero balance owing. Rent due between 1 April 2023 and 30 June 2023 equals \$2,820.00. Between this time, the tenant contributed \$2,455.00 (**Exhibit L # 2**).

Records are clear that rent for the period ending 30 June 2023 has not been paid leaving a balance of **\$413.00**.

17. Additionally, the landlord has amended the claim at the outset of the hearing to add rent for July 2023 as the tenant remains in the rental property.

18. Further, rent for July 2023 can only be calculated up to and including the day of the hearing (27 July 2023). That calculation is (\$940.00 X 12 months= \$11,280.00 divided by 365 days= \$30.90 per day X 27 days= **\$ 786.41** (\$834.41 minus \$48.00 Late fees).

### **Decision**

19. The landlord's total claim for rent succeeds as follows:

a) Rent owing up to 30 June 2023	<b>\$413.00</b>
b) Rent owing for July 1-27, 2023	<b>786.41</b>
c) Total due	<b><u>\$1,199.41</u></b>

### **Issue 2: Vacant Possession of the Rented Premises**

#### Landlord Position

20. The landlord is seeking to recover possession of the rented premises located at [REDACTED]

21. The landlord offered evidence which indicated that when the tenant fell in arrears, they issued a termination notice under Section 18 of the Act (**Exhibit L # 1**) to terminate the tenancy on 22 May 2023. The evidence suggests the tenant was served personally and the landlord testified as of the hearing day (27 July 2023), the tenant remains in the unit.

#### **Analysis**

22. The landlord indicated that the rental agreement had originally been a fixed term (12 months) which ended on 1 December 2022. Section 8 (3)(b) below identifies the requirements of fixed term being expired and a notice of termination of the rental agreement has been issued.

#### **Section 8(3)**

*Where a tenant continues to use or occupy a residential premises after a fixed term has expired, and notice of termination of the rental agreement (b) has been given, the relationship of landlord and tenant shall continue under the terms and conditions in the rental agreement until the expiration of the notice period*

23. The validity of the termination notice is determined by its compliance with the notice requirements in Section 19 (1)(b)(4) and Section 34 as well as the service requirements identified in Section 35.
24. Section 19 (1) (b) of the Act offers clear and concise timelines reference outstanding rent.

*Section 19 (1)(b)*

*Notwithstanding subsection 19(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.*

25. As identified above, the landlord offered evidence the termination notice was served personally which is a permitted method of service identified under Section 25.
26. The original Notice of Termination (**Exhibit L # 1**) identified 22 May 2023 as the intended date. The tenant remains in the residential premises on the date of hearing (27 July 2023).
27. According to the reasons identified above, I find that the termination notice issued by the landlord to be proper and valid. Therefore, the landlord is entitled to an order for vacant possession of the property along with an order for any and all costs associated with certifying the orders or with the Sheriff to enforce such a Possession Order should be Sheriff be engaged to execute the Possession Order.

**Decision**

28. The landlord's claim for vacant possession succeeds. The landlord is further awarded the cost associated with the certification and enforcement of the Possession of Order by the High Sheriff of NL.

### **Issue 3: Late Fee- \$48.00**

#### **Landlord Position**

29. The landlord is seeking fees for failure to pay rent between 10 April 2023 and 7 June 2023.

#### **Analysis**

30. Evidence was presented which indicates on 10 April 2023, there was a late fee in the amount of \$21.00; on 8 May 2023, there was a late fee in the amount of \$12.00; and, on 7 June 2023, there was a late fee in the amount of \$15.00 (**Exhibit L # 2**).

31. Section 15 (1) 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.*

32. The minister has prescribed the following information:

*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*

33. The landlord during hearing did not express a wish to amend the request for fee for failure to pay rent in the amount of \$48.00.

#### **Summary of Decision**

34. The landlord's claim for late fees succeed in the amount of \$48.00.

**Issue 4: Hearing Expense**

35. As the landlord's claim has been successful, the tenant shall pay the hearing expense of \$20.00 for the costs of filing this application.

**Summary of Decision**

36. The landlord is entitled to the following:

A payment of **\$1,267.41**, determined as follows:

a) Rent owing up to 30 June, 2023	\$413.00
b) Rent owing for July 1, 2023- July 27, 2023	786.41
c) Late Fees	48.00
d) Hearing Expenses	<u>20.00</u>
e) Total	<b><u>1,267.41</u></b>

37. The landlord's claim for an order for vacant possession of the rented premises succeeds.

15 August 2023

Date

Michael Reddy  
Residential Tenancies Tribunal