



Residential Tenancies Tribunal

Application 2023-No.0596-NL

Decision 23-0596-00

Jacqueline Williams
 Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 08-August-2023.
2. The applicant, [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 her by telephone [REDACTED] 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 she has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, electronically on 06-July-2023 to the tenant's email [REDACTED]. The landlord provided proof of email and service. 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 her absence.
5. The landlord amended their application to increase rent from \$760.00 to \$955.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$955.00
 - Late fees \$75.00
 - Security deposit applied against monies owed \$477.50
 - 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 \$955.00

Issue 2: Late fees \$75.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. They entered a written term agreement with the tenant from 01-December-2021 until 30-November-2022. They are currently in a monthly agreement. The tenant took occupancy on 15-November-2021. She pays \$955.00 a month which includes heat and light. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$477.50 on 15-November-2021 and they are still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#03), which shows that time rent was paid in full is 02-August-2022. The ledger is as follows:

Rent ledger 2023-0596-NL				
Date	Action	Amount	total	
1-Sep-22	Rent due	955.00	955.00	
21-Sep-22	payment	-731.03	223.97	
29-Sep-22	payment	-452.22	-228.25	
1-Oct-22	Rent due	955.00	726.75	
7-Oct-22	late fees	75.00	801.75	
1-Nov-22	Rent due	955.00	1756.75	
7-Nov	payment	-955.00	801.75	
1-Dec-22	Rent due	955.00	1756.75	
1-Jan-23	Rent due	955.00	2711.75	
4-Jan-23	payment	-125.00	2586.75	
4-Jan-23	payment	-1910.00	676.75	
12-Jan-23	payment	-122.50	554.25	
23-Jan-23	payment	-63.67	490.58	
1-Feb-23	Rent due	955.00	1445.58	
14-Feb-23	payment	-600.00	845.58	
27-Feb-23	payment	-600.00	245.58	
1-Mar-23	Rent due	955.00	1200.58	

13-Mar-23		payment	-600.00	600.58
1-Apr-23	Rent due		955.00	1555.58
11-Apr-23		payment	-150.00	1405.58
17-Apr-23		payment	-600.00	805.58
24-Apr-23		payment	-600.00	205.58
27-Apr-23		payment	-255.58	-50.00
1-May-23	Rent due		955.00	905.00
8-May-23	late fees		15.00	920.00
8-May-23		payment	-955.00	-35.00
1-Jun-23	Rent due		955.00	920.00
8-Jun-23		payment	-175.00	745.00
30-Jun-23	late fees		33.00	778.00
30-Jun-23	payment		-760.00	18.00
1-Jul-23	Rent due		955.00	973.00
21-Jul-23	remainder late fees		42.00	1015.00
31-Jul-23		payment	-955.00	60.00
1-Aug-23	Daily rent 01- 08 August		251.20	311.20

Daily rate: \$955.00 x 12 months = \$11,460.00

\$11,460.00 divided by 365 days = \$31.40

\$31.40 x 8 days = \$251.20

11. Note: ledger is amended to show a daily rate for August 2023, as this tribunal doesn't consider future rent.
12. Ledger also has late fees applied on 07-October-2023 for the maximum rate of \$75.00. The tenant's payments brings the amount owed out of rent arrears on 27-April-2023 and back in arrears from 02- May-2023 until 08-May-2023; a \$15.00 late fee is applied at this time. Finally, late fees are added again on 30-June-2023 and 21-July-2023.

Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#02).
14. 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.

15. The ledger reflects the amount of rent owed with late fees assigned in accordance with the *Act*. I accept the landlord's testimony and evidence and find that the tenant shall pay the landlord the rent and late fees owed totaling \$311.20.

Decision

16. The landlord's claim for rent and late fees succeeds in the amount of \$311.20.

Issue 3: Security deposit applied against monies owed \$477.50

Relevant Submissions

17. The landlord stated in paragraph 09 that the tenant paid a security deposit of \$477.50 on 15-November-2021 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

18. The landlord's claim for loss has been successful, 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

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

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

20. 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 13-June-2023 with a termination date of 26-June-2023

21. The landlord included a form to acknowledge receipt of the notice that determines a staff posted the notice to the tenant's door on 14-June-2023. It is signed by the staff who posted the notice.

Analysis

22. 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.

.....

23. 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 with the Act.
24. The tenant should have vacated the property by 26-June-2023.

Decision

25. The landlord's claim for an order for vacant possession succeeds.
26. The tenant shall vacate the premises immediately.

27. 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.
28. The tenant shall pay a daily rate for rent beginning 09-August-2023 of \$31.40, as per paragraph 10, until such time as the landlord regains possession of the property.

Issue 5: Hearing expenses reimbursed \$20.00

29. 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

30. The tenant shall:
- Pay a daily rate of rent beginning 09-August-2023 of \$31.40, until such time as the landlord regains 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.
- Shall retain \$331.20, from the security deposit, as follows:
 - Rent \$311.20
 - Hearing expenses 20.00
 - Total \$331.20

August 09, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office