

Residential Tenancies Tribunal

Application 2023-0608-NL

Decision 23-0608-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 15-August-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, by pre-paid registered mail ([REDACTED] [REDACTED]) on 24-July-2023 (LL#1). The registered mail tracking indicates that the tenant retrieved the document on 25-July-2023. In accordance with the *Residential Tenancies Act, 2018* this is good 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 his absence.
5. The landlord stated that there was a written fixed rental agreement which commenced on 16-March-2016 (LL#2), which is now a month to month agreement. Rent is currently \$915.00 per month due on the first day of each month. Rent is subsidized by NL Housing, the tenant pays \$230.00 per month. The landlord stated that a security deposit of \$427.50 was paid on 16-March-2016 and is still in the company's possession.

6. The landlord amended the application to decrease rent from \$460.00 as per the application to \$357.00 as a payment was made on 14-July-2023. The landlord also amended the application to increase NSF fees from \$100.00 to \$150.00 as a third cheque has been returned. The landlord is seeking hearing expenses reimbursed.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent paid \$357.00
 - Vacant possession of rental premises
 - Late fees \$75.00
 - Other – NSF fees \$150.00
 - Security deposit applied against monies owed (\$427.50)
 - Hearing expenses \$34.88

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 \$357.00

Relevant Submissions

10. The landlord testified that rent is outstanding in the amount of \$582.00 which includes late fees of \$75.00 and NSF fees of \$150.00. The landlord submitted a rental ledger in support of the claim (LL#3) as follows:

7/31/2023	8/2023	R-4539792	chk# DD-NLHC -	0.00	0.00	0.00	0.00	685.00	-383.00
8/1/2023	8/2023	C-4222732	lmt_res - Lease Rent Residential	915.00	0.00	0.00	915.00	0.00	532.00
8/1/2023	8/2023	C-4230029	oth_nsf - Returned check charge	50.00	0.00	0.00	50.00	0.00	582.00
8/1/2023	8/2023	R-4534082	chk# [REDACTED] - Payment Received - Thank You NSFed by cbt# [REDACTED] Payment [REDACTED] was rejected: 901 NSF(DEBIT ONLY)	0.00	0.00	0.00	0.00	230.00	352.00
8/1/2023	8/2023	R-4541170	chk# [REDACTED] - NSF receipt Ctr# [REDACTED] Payment [REDACTED] was rejected: 901 NSF(DEBIT ONLY)	0.00	0.00	0.00	0.00	-230.00	582.00

11. Late fees and NSF fees will be covered in Issue # 3 and Issue # 4 respectively below.

Analysis

12. Non-payment of rent is a violation of the rental agreement. The landlord stated that there is rental arrears in the amount of \$357.00 for the month of August. Rent is required to be paid by the tenant for the use and occupation of the rented premises, rent currently owed to the landlord is \$357.00.
13. I find the tenant shall pay the landlord \$357.00 in outstanding rent for the month of August.

Decision

14. The landlord's claim for rental arrears succeeds in the amount of \$357.00.

Issue # 2: Vacant Possession of Rented Premises

Relevant submissions:

15. The landlord submitted a termination Notice under Section 19; notice where failure to pay rent. The notice was signed and dated on 26-June-2023, with a termination date of 9-July-2023 (LL#4).

Analysis

16. 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.

17. The tenant was in rental arrears in excess of the 5 days when the notice was served on 26-June-2023. The rental ledger shows that a payment of \$685.00 was paid on 30-June-2023 leaving the tenant with a credit balance of \$352.00. The termination notice was no longer valid after 30-June-2023 and a new termination notice would have had to be issued to address any arrears after 30-June-2023. The termination notice is not a valid notice.

18. I find the termination notice is not a valid notice.

Decision

19. The landlord's claim for an order for vacant possession does not succeed.

Issue # 3: Late fees \$75.00

20. The landlord is seeking late fees in the amount of \$75.00 and the following charges have been extracted from the rental ledger to support her claim as follows:

June 26, 2023	\$53.00
July 10, 2023	22.00
Total	\$75.00

Landlord's Position

21. The landlord stated that rent is continuously late and the last 3 payments have been returned from the bank. The landlord feels the tenant should pay the maximum late fees allowable.

Analysis

22. 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*

23. The landlord's rental ledger shows a late fee charge of \$53.00 on 26-June-2023 when there was rental arrears dating back to 1-June-2023. The rental ledger also shows a late fee charge of \$22.00 on 10-July-2023 with arrears dating back to 1-July-2023.

24. I find that the \$53.00 charge on 26-June-2023 is a legitimate charge based on the payment fee as stated above. I find that the \$22.00 charge on 10-July-2023 is incorrect based on the payment fee as stated above. The late fee charge allowable on 10-July-2023 should have been \$21.00.

25. The rental ledger continued to show a negative balance until 31-July-2023 which brings the late fees up to the maximum allowable in accordance with the Act. I find that the landlord is entitled to the maximum late payment fee of \$75.00 as set by the minister.

Decision

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

Issue # 4: NSF Service Fees \$150.00

Relevant Submission

27. The landlord is claiming \$150.00 to cover the cost of 3 returned cheques. The landlord submitted a copy of the rental ledger showing that cheques were returned on 1-June, 1-July- and 1-August

Analysis

28. I accept the landlord's testimony that the tenant had 3 cheques returned due to insufficient funds. The rental ledger shows the dates that the cheques were returned. The landlord is claiming \$50.00 per returned cheque. Paragraph 4 of the rental agreement states that the tenant agrees to pay a service charge of \$25.00 on cheques returned or stop payments. Since the rental agreement was entered into back in 2016, I asked the landlord what the bank charged her at this time and she testified that the company was charged \$48.50 per transaction.
29. I find that the tenant is responsible for the bank service charges at the amount charged to the landlord by the banking institution in accordance with Section 15(2) of the *Residential Tenancies Act, 2018*.
30. I find the tenant shall pay the landlord \$145.50 for 3 returned cheques (\$48.50 x 3).

Decision

31. The landlord's claim for NSF service fees succeeds in the amount of \$145.50.

Issue # 5: Security Deposit applied against Monies Owed \$427.50

Analysis

32. The landlord's claim for vacant possession has not been successful as per paragraph 20, thus the security deposit shall remain with the landlord in trust until such time as the tenancy ends. Section 14 of the *Residential Tenancies Act, 2018* states:

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

33. The landlords' claim to apply the security deposit against monies owed does not succeed.

Issue # 6: Hearing Expenses - \$34.88

34. The landlord paid an application fee of \$20.00. Also, the landlord incurred postal costs in the amount of \$14.88 to serve the respondent (LL#5).
35. As the landlord's claim has been partially successful, the tenant shall pay the \$34.88.

Decision

36. The landlord's claim for hearing expenses succeeds in the amount of \$34.88.

Summary of Decision

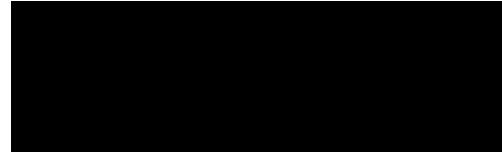
37. The landlord's claim for an order for vacant possession of the rented premises does not succeed.
38. The tenant shall:
 - a. Pay the landlord \$612.38 as follows:

Rent.....	\$357.00
Late fees	75.00
Hearing expenses	34.88
NSF service fee	<u>145.50</u>

Total ... \$612.38

August 21, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office