

Residential Tenancies Tribunal

Application 2023-No.0623 -NL Decision 23-0623-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 05-October-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 as there was no number provided. 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 (LL#01) with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail ([REDACTED]) on 14-September-2023. This package was not picked up, however in accordance with the *Residential Tenancies Act, 2018*, Section 35.5, a package sent by registered mail is considered to have been served on the fifth day. 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 amended their application to increase rent owed from \$235.00 to \$1,101.00, to reflect the current amount of rent due. As this file is for termination of the tenancy the security deposit will be applied to monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,101.00
 - Late fees \$75.00
 - Security deposit applied against monies owed \$397.00
 - Vacant possession of rental premises
 - Hearing Expenses \$33.44

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 \$1,101.00

Relevant Submissions

9. The landlord reviewed the terms of the rental agreement held with the tenant. They entered a written monthly agreement with the tenant beginning 01-July-2022. The tenant pays \$878.00 a month. 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 \$397.00 on 09-August-2022 and they are still in possession of the deposit.
10. The landlord stated that the tenant is supported by income support and that up until the June rental period the tenant was receiving \$699.00 plus two payments of \$80.50 each month. In July the payment made by income support of \$699.00 was reduced to \$482.00. Additionally, the tenant's rent increased from \$860.00 a month in June 2023 to \$878.00 in July 2023. The reductions in income support coupled with the increase of rent has placed the tenant's rent into arrears. She explained that staff have spoken to him about this issue, however the reduced payments are continuing and this issue is still not resolved.
11. The landlord submitted a rent ledger (LL#02), as follows:

Rent ledger
2023-0623-NL

Date	Action	Amount	total
31-May-23	payment	-699.00	-699.00
1-Jun-23	rent due	860.00	161.00

1-Jun-23		payment	-80.50	80.50
1-Jun-23		payment	-80.50	0.00
30-Jun-23		payment	-482.00	-482.00
30-Jun-23		payment	-80.50	-562.50
30-Jun-23		payment	-80.50	-643.00
1-Jul-23	rent due		878.00	235.00
31-Jul-23		payment	-482.00	-247.00
1-Aug-23	rent due		878.00	631.00
1-Aug-23		payment	-80.50	550.50
1-Aug-23		payment	-80.50	470.00
31-Aug-23		payment	-482.00	-12.00
1-Sep-23	rent due		878.00	866.00
1-Sep-23		payment	-80.50	785.50
1-Sep-23		payment	-80.50	705.00
29-Sep-23		payment	-482.00	223.00
1-Oct-23	daily rate Oct 01 - 05		144.35	367.35

Daily rate: 12 months x \$878.00 = \$10,536.00

\$10,536.00 divided by 365 days = \$28.87 a day

\$28.87 x 5 days in October = \$144.35

12. Note: ledger is amended to show a daily rate for October as this tribunal doesn't consider future rent.
13. The landlord is seeking full compensation for rent owed.

Analysis

14. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$367.35.
15. The tenant shall pay the landlord the rent owed totaling \$367.35.

Decision

16. The landlord's claim for rent succeeds in the amount of \$367.35.

Issue 2: Late fees \$75.00

Relevant Submissions

17. The landlord has proven, paragraph 16, that the tenant has been in and out of rental arrears as of 02-July-2023 and is seeking the maximum allowed late fees.

Analysis

18. 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.***

19. As the tenant has been arrears from 02-July-2023 until 30-July-2023; 02-August-2023 until 31-August-2023 and from 02-September-2023 until the day of the hearing. The landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister applied as follows:

Late period	\$5.00 day 1	\$2.00 for additional days	total
02-31 July 2023	02 July	03-30	\$61.00
02-31 August 2023	02 August	03-30	61.00
02-Sep-2023 until 05-Oct-2023	02 Sept	03 Sep – 05 Oct	73.00

20. This amount exceeds the amount applied for, therefore the landlord will be awarded \$75.00 as indicated on their application.

Decision

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

Issue 3: Security deposit applied against monies owed \$397.00

Relevant Submissions

22. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$397.00 on 09-August-2022 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

23. The landlord's claim for losses has been successful, paragraphs 16 and 21, 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

24. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$397.00.

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

25. The landlord submitted a termination notice (LL#03). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 14-July-2023 with a termination date of 25-July-2023.
26. The landlord said that the Resident Manager placed the notice under the tenant's door on 14-July-2023 at 2:40 p.m.

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 25-July-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 06-October-2023 of \$28.87, as per paragraph 11, until such time as the landlords regain possession of the property.

Issue 5: Hearing expenses reimbursed \$33.44

34. The landlord submitted the receipt for \$20.00 for the cost of the application fee (LL#04) and a receipt from Canada Post to send two packages totaling \$26.88 (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of the cost of the application fee \$20.00 and the cost of one package \$13.44 totaling \$33.44 from the tenant.

Summary of Decision

35. The tenant shall:

- Pay the landlord \$78.79 as follows:
 - Rent \$367.35
 - Late fee 75.00
 - Hearing expenses 33.44
 - Security deposit applied (397.00)
 - Total \$78.79
- Pay a daily rate of rent beginning 06-October-2023 of \$28.87 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.
- Shall retain the security deposit of \$397.00

October 11, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office