

## Residential Tenancies Tribunal

Application 2023-0647-NL

Decision 23-0647-00

Michael Reddy  
Adjudicator

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### Introduction

1. The hearing was call at 11:16 AM on August 16, 2023 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord", attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not attend the hearing.

### 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*, 1988. 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 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 with his application stated that he served the tenant, by registered mail on (Tracking # [REDACTED]) on July 31, 2023 (LL #1). 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 stated that there was a written monthly rental agreement which commenced on 1 April 2016 (LL#2). Rent is currently \$895.00 and is due on the first of each month. Security deposit was \$588.75 paid on 22 March 2016 which the landlord is still in possession of.

6. The landlord amended his application at the hearing and is seeking the cost of the application fee for the hearing and cost of the registered mail.

### **Issues before the Tribunal**

7. The landlord is seeking the following:

- An order for payment of rent in the amount of \$2,855.00
- An order of eviction and possession of property
- An order for payment of hearing expenses
- An order for payment of late fees of \$75.00
- An order for use of security deposit against rental arrears

### **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 case is S. 15, 19, 34 and 35 of the *Residential Tenancies Act, 2018*, and rule 29 of the *Rules of the Supreme Court, 1986*.

### **Issue 1: Rent Owing- \$2,855.00**

10. The landlord testified that rent is outstanding in the amount of \$2,855.00 and the tenant has carried forward arrears in rent since 1 June 2022 (LL#3). The landlord summarized the tenant's payment of rent has not been consistent and untimely. The landlord submitted an additional rental ledger (LL#4) to support of this claim as follows:

Date	Rent Due	Paid	Balance
1 April 2023	Rental Arrears		\$1,065.00
15 April 2023	Payment	\$895.00	\$170.00
1 May 2023	Monthly Rent	\$895.00	\$1,065.00
5 May 2023	Payment	\$895.00	\$1086.00
1 June 2023	Monthly Rent	\$895.00	\$1,065.00
1 July 2023	Monthly Rent	\$895.00	\$1,960.00
1 August 2023	Monthly Rent	\$895.00	\$2,855.00

## Analysis

11. Non-payment of rent is a violation of the rental agreement. The landlord states there are rental arrears in the amount of \$2,855.00. The landlord has amended the claim at the outset to add rent to include rent for the month of August 2023. This tribunal does not consider future rent.
12. The landlord submitted termination Notice under Section 19, notice where failure to pay rent with a requested possession of the premises by 6 July 2023 (LL#4). As such, rent was due 1 July 2023 (\$895.00) and included to the balance of rental arrears owing by the tenant equaling \$1,960.00.
13. Rent for August 2023 can only be calculated up to and including the day of the hearing (16 August 2023). That calculation is  $(\$895.00 \times 12 \text{ months} = \$10,740.00 \div 365 \text{ days} = \$29.42 \text{ per day} \times 16 \text{ days} = \$470.79)$ . Rent for 1 August 2023 – 16 August 2023 is \$470.79
14. I accept the landlord's claim that the tenant has not paid rent as required. I do not accept her records which show that the tenant owes \$2,855.00, rather, **\$2,430.79** in rental arrears.
15. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$29.42** beginning on 17 August 2023 and continuing until the day the landlord obtains vacant possession of the rented premises.

## Decision

16. The landlord's claim for a payment of the rental arrears succeeds in the amount of **\$2,430.79**.

## Issue 2: Vacant Possession of Rented Premises

17. The landlord submitted termination Notice under Section 19, notice where failure to pay rent. The notice was signed and dated on June 23, 2023 and requested possession of the premises by 6 July 2023 (LL# 4).

## Analysis

18. 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.*

19. The tenant was in rental arrears in excess of the 5 days when the notice was served on 23 June 2023 to be out of [REDACTED] by 6 July 2023. As specified in the rental ledger, the tenant's last payment of rent was 5 May 2023. The tenant remains in the property following being issued the notice to vacate and has been charged additional rental payments for June, July and August 2023. The termination notice is a valid notice.

20. I find the termination notice is a valid notice.

### **Decision**

21. The landlord's claim for an order for vacant possession does succeed.

### **Issue 3: Hearing Expenses- \$31.69**

22. The landlord paid an application fee of \$20.00 (LL#5). Also, the landlord incurred postal costs in the amount of \$11.69 to serve the respondent (LL# 6).

### **Decision**

23. The landlord's claim for hearing expenses succeeds in the amount of **\$31.69**.

#### **Issue 4: Late Fees- \$75.00**

24. The landlord has assessed late fees in the amount of \$75.00.

#### **Analysis**

25. 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 the 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.*

26. 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.*

27. As the tenant has been arrears since 19 May 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

#### **Decision**

28. The landlord's claim for late fees succeed in the amount of **\$75.00**.

#### **Issue 5: Security Deposit applied against Monies Owed \$2,537.48**

#### **Analysis**

29. The landlord provided testimony and evidence that the security deposit (\$588.75) was paid on 18 March 2016.

30. 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 tenant may apply to the director under section 42 to determine the disposition of the security deposit.*

31. The landlord's claim for rent, hearing expenses and late fees succeed, he shall retain that security deposit as outlined in this decision and attached order.

### **Summary of Decision**

32. The landlord is entitled to the following:

- A payment of **\$1,948.73**, as determined as follows:

a) Rent owing .....	\$2,430.79
b) Hearing expenses.....	\$31.69
c) Late Fees.....	\$75.00
d) Less Security Deposit.....(\$588.75)	
e) Total.....	<b><u>\$1,948.73</u></b>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of **\$29.47**, beginning 17 August 2023 and continuing to the date the landlord obtains vacant possession of the rental unit,
- The tenant shall also pay to the landlord 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 August 2023

\_\_\_\_\_  
Date



Residential Tenancies Office