

Residential Tenancies Tribunal

Application 2023-No.0669 -NL

Decision 23-0669-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 06-September-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 on 18-August-2023. The tracking number ([REDACTED]) confirms this service. The tenant did not pick up his package, however in accordance with the *Residential Tenancies Act, 2018*, this package is considered served 5 days after it is mailed. 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 decrease rent from \$260.00 to \$66.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$66.00

- Late fees \$75.00
- Vacant possession of rental premises
- Hearing Expenses \$20.00
- Security deposit applied against monies owed \$382.50

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 \$66.00

Relevant Submissions

9. The landlord stated that they have a monthly rental agreement with the tenant. He took occupancy on 01-September-2021. The rental period is from the 1st day of the month until the last day; rent is due in full on the 1st day of each month. Initially he paid \$780.00 a month for his rent, on 01-September-2023 the rent increased to \$800.00. The landlord said that the tenant paid a security deposit of \$382.50 on 07-September-2021 and they are still in possession of the deposit.
10. The landlord said that from the start they have had issues with receiving the rent in a timely fashion. She submitted a rent ledger (LL#02), as follows:

Rent ledger 2023-0669-NL				
Date	Action	Amount	total	
1-Sep-22	rent due	780.00	780.00	
27-Sep-22	payment	-385.50	394.50	
1-Oct-22	rent due	780.00	1174.50	
3-Oct-22	payment	-394.50	780.00	
1-Nov-22	rent due	780.00	1560.00	
1-Nov-22	payment	-400.00	1160.00	
10-Nov-22	payment	-385.50	774.50	
28-Nov-22	payment	-400.00	374.50	
1-Dec-22	rent due	780.00	1154.50	
6-Dec-22	payment	-375.00	779.50	
7-Dec-22	payment	-550.00	229.50	
21-Dec-22	payment	-620.25	-390.75	
1-Jan-23	rent due	780.00	389.25	
4-Jan-23	payment	-229.50	159.75	

6-Jan-23	payment	-392.50	-232.75
1-Feb-23	rent due	780.00	547.25
9-Feb-23	payment	-392.50	154.75
1-Mar-23	rent due	780.00	934.75
21-Mar-23	payment	-934.75	0.00
1-Apr-23	rent due	780.00	780.00
1-May-23	rent due	780.00	1560.00
8-May-23	payment	-780.00	780.00
8-May-23	payment	-390.00	390.00
19-May-23	payment	-390.00	0.00
1-Jun-23	rent due	780.00	780.00
29-Jun-23	payment	-1300.00	-520.00
1-Jul-23	rent due	780.00	260.00
25-Jul-23	payment	-260.00	0.00
1-Aug-23	rent due	780.00	780.00
15-Aug-23	payment	-780.00	0.00
31-Aug-23	payment	-367.50	-367.50
31-Aug-23	payment	-367.00	-734.50
1-Sep-23	rent daily rate applied Sept 01 -06	157.80	-576.70

Daily rate: $\$800.00 \times 12 \text{ months} = \$9,600.00$

$\$9,600.00$ divided by 365 days = $\$26.30$ a day

$\$26.30 \times 6 \text{ days} = \157.70

11. Note: ledger is amended to show a daily rate for September as this tribunal doesn't consider future rent. Also note that the daily rate is calculated at the increased rental amount of \$800.00 as per paragraph 9.

Analysis

12. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent in a timely fashion.
13. The tenant had paid rent in August to cover his rental arrears and as this tribunal does not consider future rent the tenant currently does not owe the landlord any rent.

Decision

14. The landlord's claim for rent fails.

Issue 2: Late fees \$75.00

Relevant Submissions

15. The landlord has shown in the rent ledger (table paragraph 10) that the tenant has frequently had rent owing. She is seeking \$75.00 late fees.

Analysis

16. 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.

17. The landlord's rent ledger shows that the tenant was in rent arrears for most of this past summer, as follows:

1-Jun-23	rent due	780.00	780.00
29-Jun-23	payment	-1300.00	-520.00
1-Jul-23	rent due	780.00	260.00
25-Jul-23	payment	-260.00	0.00

18. On 02-June-2023 the tenant is in arrears and will incur a \$5.00 fee for the first day of arrears. From 03 -28 June the tenant will incur a \$2.00 fee per day for 25 days totaling \$50.00. The month of June the tenant shall be charged \$55.00.
19. On 02-July-2023 the tenant is in arrears and will incur a \$5.00 fee for the first day of arrears. From 03 -24 July the tenant will incur a \$2.00 fee per day for 21 days totaling \$42.00. The month of July the tenant shall be charged \$47.00.
20. Therefore for the months of June and July the tenant shall incur \$102.00 in late fees as follows:
- June..... \$55.00

- July 47.00
- Total \$102.00

21. As this tribunal is application based and as the landlord is seeking \$75.00 late fees, this is the maximum amount of fees that will be awarded and therefore there is no requirement to calculate the additional late fees incurred by the tenant.

Decision

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

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

23. 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 21-July-2023, with a termination date of 02-August-2023.
24. The landlord said that the Resident Manager delivered this personally to the tenant 21-July-2023 at 12:38 p.m.
25. The landlord acknowledges that the tenant paid his rent in full 25-July-2023 which would typically mean that the notice is no longer valid. However the landlord provided a detailed history of arrears and notices served upon the tenant over the past 12 months (LL#03). The history is as follows:

Termination notice #01

1-Nov-22	payment	-400.00	1160.00
10-Nov-22	payment	-385.50	774.50
28-Nov-22	payment	-400.00	374.50
1-Dec-22	rent due	780.00	1154.50
6-Dec-22	payment	-375.00	779.50
7-Dec-22	payment	-550.00	229.50
21-Dec-22	payment	-620.25	-390.75

- 17-November-2022 eviction served
- 21-December-2022 arrears paid
- 03-January-2023 request sent to Residential Tenancies to cancel hearing 2022-1008-NL

Termination notice #02

1-Mar-23	rent due	780.00	934.75
21-Mar-23	payment	-934.75	0.00

- 06-March-2023 eviction served
- 21-March-2023 arrears paid
- 21-March-2023 request sent to Residential Tenancies to cancel hearing 2023-0203-NL

Termination notice #03

1-Apr-23	rent due	780.00	780.00
1-May-23	rent due	780.00	1560.00
8-May-23	payment	-780.00	780.00
8-May-23	payment	-390.00	390.00
19-May-23	payment	-390.00	0.00

- 14-April-2023 eviction served
- 19-May-2023 arrears paid
- 09-June-2023 request sent to Residential Tenancies to cancel hearing 2023-0346-NL

Termination notice #04

1-Jul-23	rent due	780.00	260.00
25-Jul-23	payment	-260.00	0.00
1-Aug-23	rent due	780.00	780.00
15-Aug-23	payment	-780.00	0.00

- 21-July-2023 eviction served
- 15-August-2023 arrears paid
- 06-September-2023 hearing 2023-0669-NL

26. The landlord said that they have had to “chase” the rent payments since the tenant started his tenancy and they are seeking vacant possession of the premises.

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),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 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 3 days after the notice is served on the tenant; and

(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.*

*(2) Notwithstanding subsection (1), **where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.***

*(3) **Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.***

(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 no longer in rent arrears on the date of termination, however as the landlord points out the ongoing issue with late payments and notices being served are in violation of the rental agreement. As per Section 19 (3) the tenant has been served a termination notice more than twice in a 12 month period and therefore this notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.
29. The landlord's claim for vacant possession succeed and the tenant should have vacated the property by 02-August-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 07-September-2023 of \$26.30, as per the table in paragraph 10, until such time as the landlords regain possession of the property.

Issue 4: Hearing expenses reimbursed \$20.00

34. 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.

Issue 5: Security deposit applied against monies owed \$382.50

Relevant Submissions

35. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$382.50 on 07-September-2021 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

36. The landlord's claims for loss for late fees \$75.00 and hearing expenses \$20.00 is successful, 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

37. The landlord's claim to retain the security deposit against monies owed for late fees (\$75.00) and hearing expenses (\$20.00) succeeds in the amount of \$95.00.

Summary of Decision

38. The tenant shall:

- Pay a daily rate of rent beginning 07-September-2023 of \$26.30, 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 \$95.00 of the security deposit as follows:

:

- Late fees \$75.00
- Hearing expenses 20.00
 - Total \$95.00

September 08, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office