

Residential Tenancies Tribunal

Application 2023-No.0670 -NL

Decision 23-0670-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:27 a.m. on 22-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” attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that they served the tenant with notification of today’s hearing by prepaid registered mail ([REDACTED]). The package was mailed on 28-July-2023 and tracking of the packing shows that it was delivered on 03-August-2023. The tenant confirms receipt of the notification as stated by the landlord.
5. The landlord amended their application to increase rent from \$862.13 to \$882.13 to reflect the current amount of rent due. He also requested security deposit applied to monies owed \$723.75 be added to his application.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$882.13
 - Late fees \$75.00
 - Security deposit applied against monies owed \$723.75
 - Vacant possession of rental premises
 - Hearing Expenses \$29.75

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 \$882.13

Landlord's Position

9. The landlord stated he has a written monthly rental agreement with the tenant. The tenant took occupancy on 01-July-2021 and initially paid \$965.00 for rent, currently his rent is \$1,005.00. 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 \$723.75 on 29-June-2021 and they are still in possession of the deposit.
10. The landlord explained that early on in the rental agreement the tenant had preauthorized payments that were returned for insufficient funds. At those times, the landlord charged the tenant a \$25.00 fee for the bank charges. This occurred on three separate occasions: August 2021, September 2022 and October 2022. Due to these charges the tenant has been in rent arrears for most of his tenancy.
11. The landlord said that it is their policy to only send reminder letters approximately every 3 months when a tenant is behind a minimal amount of rent. In June 2023, the tenant did not pay his rent and this created a more significant arrears. He submitted the tenant's rent ledger (LL#02), as follows:

Rent ledger
2023-0670-NL

Date	Action	Amount	total
1-Aug-21	Rent owed	965.00	965.00
1-Aug-21	preauthorized payment - not sufficient funds	25.00	990.00
3-Aug-21	payment	-965.00	25.00
1-Sep-21	Rent owed	965.00	990.00
1-Sep-21	payment	-965.00	25.00
1-Oct-21	Rent owed	965.00	990.00
1-Oct-21	payment	-965.00	25.00
1-Nov-21	Rent owed	965.00	990.00
1-Nov-21	payment	-965.00	25.00
1-Dec-21	Rent owed	965.00	990.00
1-Dec-21	payment	-965.00	25.00
1-Jan-22	Rent owed	965.00	990.00

1-Jan-22		payment	-965.00	25.00
1-Feb-22	Rent owed		965.00	990.00
1-Feb-22		payment	-965.00	25.00
1-Mar-22	Rent owed		965.00	990.00
1-Mar-22		payment	-965.00	25.00
1-Apr-22	Rent owed		965.00	990.00
1-Apr-22		payment	-965.00	25.00
1-May-22	Rent owed		965.00	990.00
1-May-22		payment	-965.00	25.00
1-Jun-22	Rent owed		965.00	990.00
1-Jun-22		payment	-965.00	25.00
1-Jul-22	Rent owed		985.00	1010.00
1-Jul-22		payment	-985.00	25.00
1-Aug-22	Rent owed		985.00	1010.00
1-Aug-22		payment	-985.00	25.00
1-Sep-22	Rent owed		985.00	1010.00
6-Sep-22	preauthorized payment - not sufficient funds		25.00	1035.00
12-Sep-22		payment	-1010.00	25.00
1-Oct-22	Rent owed		985.00	1010.00
6-Oct-22	preauthorized payment - not sufficient funds		25.00	1035.00
17-Oct-22		payment	-985.00	50.00
1-Nov-22	Rent owed		985.00	1035.00
2-Nov-22		payment	-985.00	50.00
1-Dec-22	Rent owed		985.00	1035.00
5-Dec-22		payment	-1010.00	25.00
1-Jan-23	Rent owed		985.00	1010.00
4-Jan-23		payment	-9.00	1001.00
4-Jan-23		payment	-985.00	16.00
1-Feb-23	Rent owed		985.00	1001.00
2-Feb-23		payment	-985.00	16.00
1-Mar-23	Rent owed		985.00	1001.00
6-Mar-23		payment	-985.00	16.00
1-Apr-23	Rent owed		985.00	1001.00
4-Apr-23		payment	-985.00	16.00
1-May-23	Rent owed		985.00	1001.00
3-May-23		payment	-985.00	16.00
1-Jun-23	Rent owed		985.00	1001.00
1-Jul-23	Rent owed		1005.00	2006.00
1-Jul-23	reduction for inconvenience		-158.87	1847.13
6-Jul-23		payment	-985.00	862.13
1-Aug-23	daily rate of rent Aug 01 - 22		726.88	1589.01
2-Aug-23		payment	-985.00	604.01

Daily rate: \$1,005.00 x 12 months = \$12,060.00

\$12,060.00 divided by 365 days = \$33.04 a day

\$33.04 a day x 22 days = \$726.88

12. Note: ledger is amended to show a daily rate for August as this tribunal doesn't consider future rent.
13. The landlord said that there was an issue with the tenant's plumbing and they were without the shower for 5 days in June 2023. The landlord submitted a letter (LL#04) informing the tenant that they would receive a credit to their rent of \$158.87 for this inconvenience; applied 01-July-2023.
14. The landlord is seeking full payment of rent owed.

Tenant's Position

15. The tenant said he believed he had paid the rent and banking charges in full and wasn't aware that he was carrying the \$25.00 balance for most of his tenancy. He agrees that he did not pay his rent in June. He said that there was an issue with the plumbing in his bathroom that began in May. He said that the contractors were fixing the issue in June and he was unable to use his shower for 5 days. He continued that he works from home, the contractors showed up sick, making himself and his wife sick, and that the whole issue was very inconvenient. The tenant believes that the landlord's compensation of \$158.87 is not adequate. He states he spoke to the Resident Manager about this issue and acknowledges that he has not filed an application with this tribunal to have this issue resolved.

Analysis

16. In accordance with Section 15 of the Residential Tenancies Act, 2018, the landlord may charge the tenant a fee in the same amount of the financial institution for a payment of rent being returned due to insufficient funds, as follows:

Fee for failure to pay rent

15. (2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

17. Non-payment of rent is a violation of the rental agreement. This tribunal is application based and I am unable to assess the value of the tenant's issue of compensation for inconvenience for the repair of the washroom. The tenant never filed this claim and the landlord would not be prepared to respond without appropriate notice of that claim.
18. The tenant has agreed that he did not pay the rent in June. I accept the testimony of the landlord concerning the ongoing issue with the banking charges. He stated those charges were not aggressively sought after and therefore the tenant might not have realized that this bill was still outstanding, however the charges still apply. I find the tenant did not pay rent totaling \$604.01.

19. The tenant shall pay the landlord the rent owed totaling \$604.01.

Decision

20. The landlord's claim for rent succeeds in the amount of \$604.01.

Issue 2: Late fees \$75.00

Relevant Submissions

21. The landlord has proven, paragraph 20 and the ledger in paragraph 11, the tenant has been in rental arrears as of 02-August-2021 and is seeking the maximum allowed late fees.

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. As the tenant has been arrears since 02-August-2021 the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security deposit applied against monies owed \$723.75

Relevant Submissions

25. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$723.75 on 29-June-2021 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

26. The landlord's claim for losses has been successful, paragraphs 17 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

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

Issue 4: Vacant Possession of the Rental Premises

Landlord's Position

28. The landlord submitted a termination notice (LL#03). The landlord had included a letter informing the tenant of rent arrears (dated 20-July-2023) with the termination notice on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 20-July-2023, with a termination date of 01-August-2023.
29. The landlord said that it is their practice that the letter and notice are emailed to the Resident Manager and she is told that the document is time sensitive and to ensure that once it is served to the tenant a confirmation email is sent confirming service. The landlord submitted this email thread (LL#05) with the Resident Manager's response stating that she had posted the notice to the tenant's door on 20-July-2023 at 7:29 p.m.
30. The landlord confirmed with the Resident Manager that both documents had been served to the tenant and he further explained, she stated that shortly after she served the tenant with notification he came to her and questioned what the papers meant.

Tenant's Position

31. The tenant initially stated that he only received the letter and not the termination notice. He later retracted this and said he might have confused the service of the hearing notification with the termination notice.

Analysis

32. 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.

.....

33. I accept the landlord's testimony of the service of the notice. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened. The landlord submitted evidence confirming the service of documents and supporting the testimony given. The tenant retracted his

initial complaint that he didn't receive the termination notice and he said he was confused about the number of documents that he has received, which is understandable.

34. The landlord has proven that 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*.
35. The tenant should have vacated the property by 01-August-2023.

Decision

36. The landlord's claim for an order for vacant possession succeeds.
37. The tenant shall vacate the premises immediately.
38. 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.
39. The tenant shall pay a daily rate for rent beginning 23-August-2023 of \$33.04, as per paragraph 11, until such time as the landlords regain possession of the property.

Issue 5: Hearing expenses reimbursed \$29.75

40. The landlord submitted the receipt for \$20.00 for the cost of the application (LL#06) and a receipt from Canada Post for \$9.75 (LL#07); pursuant to policy 12.01, is entitled to reimbursement of those costs totaling \$29.75, from the tenant.

Summary of Decision


41. The tenant shall:
 - Pay a daily rate of rent beginning 23-August-2023 of \$33.04, 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 \$708.76 from the security deposit, as follows:
 - Rent \$604.01
 - Late fees 75.00
 - Hearing expenses 29.75
 - Total \$708.76

August 28, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office