

## **Residential Tenancies Tribunal**

Application 2023-0689-NL

Decision 23-0689-00

Michael Reddy  
Adjudicator

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### **Introduction**

1. The hearing was called at 9:00 AM on August 24, 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, attended the hearing.
4. The details of the claims were presented as an oral agreement with rent set at \$650.00 and due on the 1<sup>st</sup> of each month. There was a security deposit requested in the amount of \$350.00 on 26 June 2023, which has not been collected on this tenancy, the current rental agreement was monthly, and the tenants occupied [REDACTED] [REDACTED] effective 26 June 2023. The landlord issued a termination notice on 29 June 2023 to terminate the tenancy on 6 July 2023 under section 10 of the *Residential Tenancies Act, 2018* (LL#1). The landlord issued a further notice on June 29, 2023 to terminate the tenancy on 19 July 2023 under section 19 of the *Residential Tenancies Act, 2018* (LL#2). Lastly, the landlord issued a notice on 8 July 2023 to terminate the tenancy on 20 July 2023 under section 19 and section 24 of the *Residential Tenancies Act, 2018* (LL#3). The tenants were served in person, an application for dispute resolution and a notice of re-scheduled hearing on 11 August 2023 (LL# 4; LL #5).
5. 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.

## **Preliminary Matters**

6. The landlord amended his application at the hearing, increasing the rental arrears owing (\$1,600.00), and did not wish to seek payment for outstanding utilities.
7. The landlord called two witnesses during the hearing, who both offered testimony. [REDACTED] and [REDACTED] offered verbal testimony during the hearing. The tenants did not call any witnesses.

## **Issues before the Tribunal**

8. The landlord is seeking the following:
  - An order for payment of rent in the amount of \$1,600.00;
  - An order for vacant possession of the rented premises;
  - An order for payment of hearing expenses; &
  - An order for payment of late fees of \$75.00

## **Legislation and Policy**

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*
10. Also relevant and considered in this case is S. 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- \$1,600.00**

11. The landlord stated that there is an oral monthly rental agreement established with the tenants and that both have occupied the rental premises since 26 June 2023.
12. The landlord testified the tenants were requested to pay a security deposit of \$350.00 which, on the date of hearing, remains unpaid. The landlord stated the tenants had failed to pay rent for both July and August 2023 and remain in the unit at the date of the hearing (24 August 2023).

13. The landlord submitted an updated rental ledger (LL#6) regarding rental arrears for July 2023:

Date	Description	Amt Due	Paid	Balance
1 July 2023	Monthly Rent	\$650.00	\$0	\$650.00
1 July 2023	Security Deposit	\$350.00	\$0	

### Analysis

14. Non-payment of rent is a violation of the rental agreement. The landlord has amended the claim at the outset to add rent to include rent up until August 2023. This tribunal does not consider future rent.
16. The landlord submitted termination Notice under Section 19, notice where failure to pay rent with a requested possession of the premises by 19 July 2023 (LL#2). As such, rent was due 1 July 2023 and rental arrears owing by the tenant equaling **\$650.00** including up to 31 July 2023.
17. Rent for August 2023 can only be calculated up to and including the day of the hearing (24 August 2023). That calculation is  $(\$650.00 \times 12 \text{ months} = \$7,800.00 \div 365 \text{ days} = \$21.36 \text{ per day} \times 24 \text{ days} = \$512.88)$ . Rent for 1 August 2023 – 23 August 2023 is **\$512.88**.
18. I accept the landlord's claim that the tenant has not paid rent as required. The tenant owes **\$1,162.88**. Current Balance of rental arrears is **\$1,162.88**.
19. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$ 21.36** beginning on 25 August 2023 and continuing until the day the landlord obtains vacant possession of the rented premises.

### Decision

20. The landlord's claim for a payment of the rent succeeds in the amount of **\$1,162.88**.

### Issue 2: Vacant Possession of Rented Premises

21. The landlord submitted termination Notice under Section 19, notice where failure to pay rent. The notice was signed and dated on 29 June 2023 and requested possession of the premises by 19 July 2023 (LL# 2).

## Analysis

22. 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.

23. The tenants had been in rental arrears in excess of the 5 days when the notice was served on 8 July 2023 to be out of [REDACTED] [REDACTED] on 20 July 2023 (LL#3). The tenant remains in the property following being issued the notice to vacate and have been charged additional rental payments for July and August 2023. The termination notice is a valid notice.

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

## Decision

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

### **Issue 3: Late Fees - \$75.00**

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

#### **Analysis**

27. 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 agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.**

28. 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.*

29. As the tenants have been arrears since 5 July 2023 up until the date of this hearing (24 August 2023), the landlord is entitled to a payment of maximum fee of \$75.00 set by the minister.

#### **Decision**

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

### **Issue 4: Hearing Expenses- \$20.00**

31. The landlord paid an application fee of \$20.00 (LL#6).

#### **Decision**

32. As the landlord's claim has been successful, the tenants shall pay the landlord's hearing expense of **\$20.00** for the costs of filing this application.

## Summary of Decision

33. The landlord is entitled to the following:

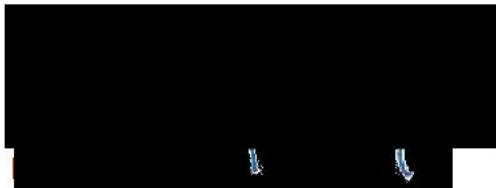
- A payment of **\$2,523.95**, as determined as follows:

a) Rent owing	\$1162.88
b) Hearing expenses	20.00
c) Late Fees	<u>75.00</u>
d) Total	<u><b>\$1257.88</b></u>

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$21.36, beginning by 25 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.

06 September 2023

\_\_\_\_\_  
Date



Residential Tenancies Office