

Residential Tenancies Tribunal

Application 2023-No.0692 -NL Decision 23-0692-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 29-August-2023.
2. The applicants, [REDACTED] and [REDACTED], are represented by [REDACTED], he is hereinafter referred to as “the landlord” and he 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 proof of service with his application stating that he had served the tenant with notice of the hearing, electronically on 04-August-2023 ([REDACTED]). 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 from \$3,825.00 to \$5,100.00 to reflect the current amount of rent due. He is also seeking security deposit applied against monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$5,100.00
 - Late fees \$180.00
 - Security deposit applied against monies owed \$900.00
 - Vacant possession of rental premises

- Hearing Expenses \$20.00

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 \$5,100.00

Relevant Submissions

9. The landlord stated he has a verbal rental agreement with the tenant. He said he is unsure of when the tenant moved in; he believes it would be in excess of 8 years. He said that he purchased the house and the tenant was already living there. The tenant has a monthly agreement from the 15th day of each month until the 14th day of the following month. The rent of \$1,275.00 is due in full on the 15th day of each month. The landlord said that the tenant paid a security deposit of \$900.00 to the previous owner and he gained possession of the tenant's deposit with the sale of the house. He is still in possession of the deposit.
10. The landlord said that the tenant gave him postdated cheques for his rent and that when he deposited the cheques for the 15-May-2023 and 15-June-2023 payments they were returned for non-sufficient funds. He submitted his bank statements (LL#03) as evidence of those transactions. He said that the tenant is a pensioner and he doesn't know what happened, but when he would ask him if he had money to pay his rent he would just reply "no."
11. The landlord submitted a rent ledger (LL#02), showing that the tenant has not made the May, June, July or August 15th rent payments. He is seeking 4 months' rent of \$1,275.00 for a total of \$5,100.00 as rent owed.

Analysis

12. 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 beginning 15-May-2023 until the present time.
13. As this tribunal does not consider future rent I will award the landlord full rent for May, June and July totaling \$3,825.00 plus a daily rate of rent for August of \$628.80, as follows:

- $\$1,275.00 \times 12 \text{ months} = \$15,300.00 \text{ per year}$
- $\$15,300.00 \text{ per year divided by } 365 \text{ days} = \41.92 a day
- $15 \text{ days} \times \$41.92 \text{ a day} = \628.80

14. The tenant shall pay the landlord the rent owed totaling $\$3825.00 + \$628.80 = \$4,453.80$.

Decision

15. The landlord's claim for rent succeeds in the amount of \$4,453.80.

Issue 2: Late fees \$180.00

Relevant Submissions

16. The landlord has proven, paragraph 14, that the tenant has been in rental arrears as of 16-May-2023 and is seeking the maximum allowed late fees.

Analysis

17. 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.*

18. As the tenant has been arrears since 16-May-2023 the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security deposit applied against monies owed \$900.00

Relevant Submissions

20. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$900.00 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

21. The landlord's claim for losses has been successful, paragraphs 16 and 20, and he 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

22. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$900.00.

Issue 4: 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 31-July-2023 with a termination date of 13-August-2023. He stated that he served the tenant electronically on 31-July-2023 at 11:40 a.m.
24. The landlord is seeking an order for vacant possession of the rental premises.

Analysis

25. 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.

26. 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.

27. The tenant should have vacated the property by 13-August-2023.

Decision

- 28. The landlord's claim for an order for vacant possession succeeds.
- 29. The tenant shall vacate the premises immediately.
- 30. 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.
- 31. The tenant shall pay a daily rate for rent beginning 30-August-2023 of \$41.92, as per paragraph 14, until such time as the landlords regain possession of the property.

Issue 5: Hearing expenses reimbursed \$20.00

- 32. 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.

Summary of Decision

33. The tenant shall:

- Pay the landlord \$3,648.80 as follows:
 - Rent \$4,453.80
 - Late fees 75.00
 - Hearing expenses 20.00
 - Security deposit applied ... (\$900.00)
 - Total \$3,648.80
- Pay a daily rate of rent beginning 30-August-2023 of \$41.92, 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 \$900.00

September 6, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office