

## **Residential Tenancies Tribunal**

Application 2023-No.0717-NL

Decision 23-0717-00

Jacqueline Williams  
Adjudicator

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### **Introduction**

1. Hearing was called at 2:00 p.m. on 06-September-2023.
2. The applicant, [REDACTED] Ltd., represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.

### **Preliminary Matters**

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone ([REDACTED]) at the start of the hearing as the number was incorrect. 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 his application stating that a staff member had served the tenants with notice of the hearing, in person on 21-August-2023. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. The landlord amended the application to increase rent from \$800.00 to \$2,300.00 to reflect the current amount of rent due. As this hearing is for a vacant possession, the landlord also amended the application to apply the security deposit of \$620.00 against monies owed.

### **Issues before the Tribunal**

6. The landlord is seeking:
  - Rent \$2,300.00
  - Late fees \$75.00

- Security deposit applied against monies owed \$620.00
- 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 \$2,300.00

#### Relevant Submissions

9. The landlord stated that they have a verbal monthly rental agreement that began in September 2020. Initially the rent was \$845.00 and each year it has increased, currently the rent is \$1,500.00 a month. The rental period is from the last day of each month until the 2<sup>nd</sup> last day of the following month. Rent is due in full on the last day of each month. The tenants paid a security deposit of \$620.00 on 09-September-2020 and they are still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#02), the ledger shows that rental payments are sporadic, on 04-July-2023 the rent was paid in full. The landlord is seeking past due rent for August and September, as follows:

Rent ledger  
2023-0717-NL

Date	Action	Amount	total
31-Jul-23	Rent due	1500.00	1500.00
31-Jul-23	payment	-200.00	1300.00
7-Aug-23	payment	-500.00	800.00
31-Aug-23	daily rate of rent Aug 31 - Sep 06	345.24	1145.24

Daily rate: \$1,500 x 12 months = \$18,000  
\$18,000.00 divided by 365 days = \$49.32  
\$49.32 a day x 7 days = \$345.24

11. Note: ledger is amended to show a daily rate for September as this tribunal doesn't consider future rent.

## 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 of \$1,145.24.
13. The tenants shall pay the landlord the rent owed totaling \$1,145.24.

## Decision

14. The landlord's claim for rent succeeds in the amount of \$1,145.24.

## Issue 2: Late fees \$75.00

### Relevant Submissions

15. The landlord has proven, paragraph 14, that the tenant has been in rental arrears as of 01-August-2023 and is seeking the maximum allowed 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. As the tenant has been arrears since 01-August-2023, the landlord is entitled to a payment of \$5.00 for 01-August-2023 and the \$2.00 a day for 02-August-2023 until 07-September-2023 or 37 days x \$2.00 = \$74.00. \$5.00 + \$74.00 = \$79.00 however the maximum fee of \$75.00 will be awarded as set by the minister.

## Decision

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

### **Issue 3: Security deposit applied against monies owed \$620.00**

#### Relevant Submissions

19. The landlord stated in paragraph 9 that the tenants paid a security deposit of \$620.00 on 09-September-2020 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

#### **Analysis**

20. The landlord's claim for losses has been successful, paragraphs 14 and 18, 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**

21. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$620.00.

### **Issue 4: Vacant Possession of the Rental Premises**

#### Relevant Submissions

22. The landlord submitted a termination notice (LL#03). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 07-August-2023, with a termination date of 18-August-2023.
23. The landlord said that a staff served it personally to the tenants on 07-August-2023.

#### **Analysis**

24. 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.

25. The tenants were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenants were 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.
26. The tenants should have vacated the property by 18-August-2023.

### **Decision**

27. The landlord's claim for an order for vacant possession succeeds.
28. The tenants shall vacate the premises immediately.
29. The tenants 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.
30. The tenants shall pay a daily rate for rent beginning 08-September-2023 of \$49.32, as per the table in paragraph 10, until such time as the landlords regain possession of the property.

### **Issue 5: Hearing expenses reimbursed \$20.00**

31. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenants.

## **Summary of Decision**

32. The tenants shall:

- Pay the landlord \$620.24 as follows:
  - Rent ..... \$1,145.24
  - Late fees ..... 75.00
  - Hearing expenses ..... 20.00
  - Security deposit applied ..... (620.00)
    - Total ..... \$620.24
- Pay a daily rate of rent beginning 08-September-2023 of \$49.32, 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 \$620.00

September 11, 2023

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office