

Residential Tenancies Tribunal

Application 2023-0719-NL

Decision 23-0719-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 31-August-2023.
2. The applicant, [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 her by telephone at the start of the hearing. 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 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 she has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing electronically by text to; [REDACTED] on 17-August-2023 (LL#1). The landlord submitted proof of sent email and proof that the number belongs to the tenant (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 her absence.
5. The landlord stated that there was a written fixed rental agreement which commenced on 1-November-2022 (LL#3). Rent was initially \$1700.00 per month but was increased on 1-April-2023 to \$1800.00 to be paid semimonthly. A security deposit of \$1275.00 was paid on 21-October-2022 and is still in the possession of the landlord.

Issues before the Tribunal

6. The landlord is seeking:
 - a. Rent paid \$2516.00
 - b. Late fees \$75.00
 - c. An order for Vacant possession of rented premises
 - d. Security deposit applied against monies owed \$1275.00
 - e. 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 19: Notice where failure to pay rent, Section 14: Security deposit and Section 15: Late fees.

Issue # 1: Rent Paid \$2516.00 Late fees \$75.00

Relevant Submissions

9. The landlord testified that rent is outstanding in the amount of \$2516.00 which includes late fees each month. The landlord submitted a rental ledger in support of the claim (LL#4) as follows:

January 7, 2023	January 2023 - Payment	1,700.00		
January 7, 2023	Late Fees	17.00	17.00	
February 1, 2023	February 2023 - Rent		1,700.00	1,717.00
February 2, 2023	February 2023 - Rent Payment	850.00		867.00
February 28, 2023	Late Fees	59.00	926.00	
March 1, 2023	March 2023 - Rent		1,700.00	2,626.00
March 2, 2023	March 2023 - Payment	1,000.00		1,626.00
March 18, 2023	March 2023 - Payment	1,200.00		426.00
March 31, 2023	March 2023 - Payment	350.00		76.00
March 31, 2023	Late Fees	65.00	141.00	
April 1, 2023	April 2023 - Rent		1,800.00	1,941.00
April 2, 2023	April 2023 - Rent Payment	900.00		1,041.00
April 20, 2023	April 2023 - Rent Payment	800.00		241.00
April 30, 2023	Late Fees	63.00	304.00	
May 1, 2023	May 2023 - Rent		1,800.00	2,104.00
May 1, 2023	May 2023 - Rent Payment	850.00		1,254.00
May 19, 2023	May 2023 - Rent Payment	850.00		404.00
May 31, 2023	Late Fees	65.00	469.00	
June 1, 2023	June 2023 - Rent		1,800.00	2,269.00
June 4, 2023	June 2023 - Rent Payment	850.00		1,419.00
June 30, 2023	Late Fees	63.00	1,482.00	

July 1, 2023	July 2023 - Rent	1,800.00	3,282.00
July 2, 2023	July 2023 - Rent Payment	850.00	2,432.00
July 15, 2023	July 2023 - Rent Payment	1,400.00	1,032.00
July 20, 2023	July 2023 - Rent Payment	400.00	632.00
July 31, 2023	Late Fees	63.00	695.00
August 1, 2023	August 2023 - Rent	1,800.00	2,495.00
August 9, 2023	Late Fees	21.00	2,516.00
			2,516.00
			2,516.00
	TOTAL:		2,516.00

Landlord's Position

10. The landlord testified that the tenant has outstanding rent in the amount of \$2516.00 which includes late fees. The landlord testified that rent was initially \$1700.00 per month until 1-April-2023 when the tenant asked if she could pay every 2 weeks as opposed to monthly and the landlord testified that the tenant offered to pay an extra \$100.00 per month if the landlord agreed to change the payment dates. The landlord submitted documentation to show that the increase in rent was a mutually agreed upon decision by both parties and initiated by the tenant (LL#5).
11. The landlord testified that the last time he received any rent monies from the tenant was on 20-July-2023.

Analysis

12. Non-payment of rent is a violation of the rental agreement. The landlord stated that there is rental arrears in the amount of \$2516.00 dating back to 7-January-2023 (last zero balance). Rent is required to be paid by the tenant for the use and occupation of the rented premises.
13. Review of the rental ledger shows that the landlord included late fees in the ledger each month. The late fees in the ledger are from 1-January to 9-August totaling \$416.00 which exceeds the maximum allowable under Section 15 of the *Residential Tenancies Act, 2018*.
14. 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

15. The landlord's rental ledger shows a late fee charge of \$17.00 on 7-January-2023 when there was rental arrears dating back to 1-January-2023. The rental ledger also shows a late fee charge of \$59.00 on 28-February-2023 and \$65.00 on 31-March-2023. The landlord continuously added late fee charges each month exceeding the maximum allowable as stated above.

16. I find that the landlord's rental ledger shows an accurate account of outstanding rent however the late fees need to be adjusted. An updated rental ledger is provided below to show a more accurate account of outstanding rent and late fees combined. I find that the tenant owes \$2175.00 in rent and late fees for the period of 1-January to 31-August, 2023.

Updated Rent Ledger - 2023-0719-NL			
Date	Action	Amount	Total
January 7, 2023	Balance	\$0.00	
January 7, 2023	Late fees (6 days)	\$15.00	\$15.00
February 1, 2023	Rent Due	\$1,700.00	\$1,715.00
February 2, 2023	Payment	-\$850.00	\$865.00
February 28, 2023	Late fees (27 days)	\$57.00	\$922.00
March 1, 2023	Rent Due	\$1,700.00	\$2,622.00
March 2, 2023	Payment	-\$1,000.00	\$1,622.00
March 18, 2023	Payment	-\$1,200.00	\$422.00
March 31, 2023	Payment	-\$350.00	\$72.00
March 31, 2023	Late fees (30 days) - Maximum	\$3.00	\$75.00
April 1, 2023	Rent Due	\$1,800.00	\$1,875.00
April 2, 2023	Payment	-\$900.00	\$975.00
April 20, 2023	Payment	-\$800.00	\$175.00
May 1, 2023	Rent Due	\$1,800.00	\$1,975.00
May 1, 2023	Payment	-\$850.00	\$1,125.00
May 19, 2023	Payment	-\$850.00	\$275.00
June 1, 2023	Rent Due	\$1,800.00	\$2,075.00
June 4, 2023	Payment	-\$850.00	\$1,225.00
July 1, 2023	Rent	\$1,800.00	\$3,025.00
July 2, 2023	Payment	-\$850.00	\$2,175.00
July 15, 2023	Payment	-\$1,400.00	\$775.00
July 20, 2023	Payment	-\$400.00	\$375.00
August 1, 2023	Rent Due	\$1,800.00	\$2,175.00

17. I find the tenant is responsible for outstanding rent and late fees in the amount of \$2175.00 for the period of 1-January to 31-August-2023. A daily rate of \$59.18 shall apply after 31-August-2023 ($\$1800 \times 12 \text{ months} = \$21600 / 365 \text{ days} = \59.18 daily rate).

Decision

18. The landlord's claim for rental arrears and late fees succeeds in the amount of \$2175.00.

Issue # 2: Vacant Possession of Rented Premises

Relevant submissions:

19. The landlord submitted a termination Notice under Section 19; notice where failure to pay rent. The notice was signed and dated on 9-August-2023, with a termination date of 21-August-2023 (LL#6).

Analysis

20. 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.**

21. The tenant was in rental arrears in excess of the 5 days when the notice was served on 9-August-2023. On the date of termination, 21-August-2023 the tenant was still in arrears. In accordance with the *Residential Tenancies Act, 2018*, the termination notice meets the requirements of the Act and is a valid notice.

22. I find the tenant should have vacated the premises by 21-August-2023.

Decision

23. The landlord's claim for an order for vacant possession of the rented premises succeeds.
24. The tenant shall vacate the premises immediately

25. The tenant shall 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.

Issue # 3: Security deposit applied against monies owed \$1275.00

Analysis

26. The landlord's claim for losses has been successful as per paragraph 18, and he shall retain the security 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 apply the security deposit against monies owed succeeds in the amount of \$1275.00.

Issue # 4: Hearing Expenses - \$20.00

28. The landlord paid an application fee of \$20.00 (see receipt LL#7).

29. As the landlord's claim has been successful, the tenant shall pay the \$20.00.

Decision

30. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

31. The tenant shall:

Pay the landlord \$920.00 as follows:

Rent and Late fees	\$2175.00
Hearing expenses	20.00
Less Security deposit	<u>(\$1275.00)</u>
Total	<u>\$920.00</u>

32. Orders that the tenant pay a daily rate of rent beginning 1-September of \$59.18, until such time as the landlord regains possession of the property.

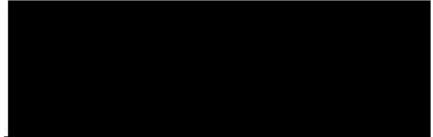
33. Vacate the property immediately

34. 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.

35. The landlord will be awarded an Order of Possession.

September 6, 2023

Date


Pamela Pennell
Residential Tenancies Office