

## **Residential Tenancies Tribunal**

Application 2023-0730-NL

Decision 23-0730-00

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 9:12 a.m. on 11-September-2023.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] (respondent 1), [REDACTED] (respondent 2), and [REDACTED] (respondent 3) 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 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as they have been properly served. The landlord submitted 3 separate affidavits with their application stating that they had served the tenants with the notice of hearing via pre paid registered mail; respondent 1 ([REDACTED]), respondent 2 ([REDACTED]), and respondent 3 ([REDACTED]) on 26-August-2023 (LL#1). Canada post tracking shows that the envelopes were never picked up. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. 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. There is a written fixed rental agreement which commenced on 1-September-2022 (LL#2). Rent was \$1055.00 per month due on the fist of each month. A rent increase of \$45 came into effect on 1-September-2023. A security deposit of \$776.25 was paid on 10-August-2022 and is still in the possession of the landlord.

## Issues before the Tribunal

6. The landlord is seeking:
  - a. Rent paid \$1383.65
  - b. Late fees \$75.00
  - c. An order for Vacant possession of rented premises
  - d. Security deposit applied against monies owed \$776.25
  - e. Hearing expenses \$64.65

## 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, Section 15: Late fees and Policy 12; Fees, Costs and Interest.

### Issue # 1: Rent Paid \$1383.65

#### Relevant Submissions

9. The landlord testified that rent is outstanding in the amount of \$1383.65 and submitted a rental ledger to support their claim (LL#3). See breakdown of ledger below:

Rental Ledger 2023-0730-NL			
Date	Action	Amount	Total
June 30, 2023	Balance	\$0.00	\$0.00
July 1, 2023	Rent due	\$1,055.00	\$1,055.00
July 14, 2023	Payment	-\$717.34	\$337.66
August 1, 2023	Rent due	\$1,055.00	\$1,392.66
August 14, 2023	Payment	-\$739.34	\$653.32
August 21, 2023	Payment	-\$369.67	\$283.65
September 1, 2023	Rent due	\$1,100.00	\$1,383.65

## Analysis

10. 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*

11. Non-payment of rent is a violation of the rental agreement. The landlord testified that there are rental arrears in the amount of \$1383.65 dating back to 1-July-2023 (last zero balance). Rent is required to be paid by the tenant for the use and occupation of the rented premises.
12. The rental ledger is amended to show a daily rate for September as this tribunal doesn't consider future rent (see below). I find that the tenants are responsible for outstanding rent from 1-July-2023 to 11-September-2023 in the amount of \$681.41 and then a daily rate of \$36.16 shall apply as calculated below:

Amended Rental Ledger 2023-0730-NL			
Date	Action	Amount	Total
June 30, 2023	Balance	\$0.00	
July 1, 2023	Rent due	\$1,055.00	\$1,055.00
July 14, 2023	Payment	-\$717.34	\$337.66
August 1, 2023	Rent due	\$1,055.00	\$1,392.66
August 14, 2023	Paymet	-\$739.34	\$653.32
August 21, 2023	Payment	-\$369.67	\$283.65
September 1-11, 2023	Rent due	\$397.76	\$681.41

Daily rate:  $\$1100 \times 12 \text{ mths} = \$1320$   
 $\$1320 / 365 \text{ days} = \$36.16$

13. I find the tenant is responsible for outstanding rent in the amount of \$681.41 for the period of 1-July to 11-September, 2023.

## Decision

14. The landlord's claim for rent paid succeeds in the amount of \$681.41.

## Issue # 2: Late fees \$75.00

15. The landlord is seeking the maximum allowable late fees of \$75.00.

## 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. Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF states;

**Late Payment Fee:**

- a. *A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.*
- 18. The landlord's rental ledger shows a late fee charge of \$21.00 on 10-July-2023 when there was rental arrears dating back to 1-July. The rental ledger also shows a late fee charge of \$54.00 added on 10-August while still in arrears. I accept that the late charge fee of \$75.00 was charged in accordance with Policy 12-1 as rent had not been in full since 1-July-2023.
- 19. I find that the late fee charges are legitimate charges based on the payment fee as stated above.
- 20. I find the tenant is responsible for the maximum allowable late fees of \$75.00 as set by the Minister.

**Decision**

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

**Issue # 3: Vacant Possession of Rented Premises**

Relevant submissions:

22. The landlord submitted a termination notice under Section 19; notice where failure to pay rent. The notice was signed and dated on 12-July-2023, with a termination date of 25-July-2023 (LL#4).

**Analysis**

23. The tenant was in rental arrears in excess of the 5 days when the notice was served on 12-July-2023. On the date of termination, 25-July-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.

24. I find the tenant should have vacated the premises by 25-July-2023.

### **Decision**

25. The landlord's claim for an order for vacant possession of the rented premises succeeds.

26. The tenant shall vacate the premises immediately

27. 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

28. Order of Possession.

### **Issue # 4: Security deposit applied against monies owed \$776.25**

#### **Analysis**

29. The landlord's claim for losses has been successful as per paragraph 14, and they 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**

30. The landlords' claim to apply the security deposit against monies owed succeeds in the amount of \$776.25.

### **Issue # 4: Hearing Expenses - \$64.65**

31. The landlord paid an application fee of \$20.00 (LL#5). Also, the landlord had postage fee charges in the amount of \$44.65 (LL#6).

32. As the landlord's claim has been successful, the tenant shall pay the \$64.65.

## **Decision**

33. The landlord's claim for hearing expenses succeeds in the amount of \$64.65.

## **Summary of Decision**

34. The tenant shall:

pay the landlord \$44.81 as follows:

Rent .....	\$681.41
Late fees.....	75.00
Hearing expenses.....	64.65
<b>Less Security deposit.....</b>	<b><u>(\$776.25)</u></b>
<b>Total .....</b>	<b><u>\$44.81</u></b>

35. Orders that the tenant pay a daily rate of rent beginning 12-September of \$36.16, until such time as the landlord regains possession of the property.

36. Vacate the property immediately

37. 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.

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

September 14, 2023

Date

Pamela Pennell  
Residential Tenancies Office