

Residential Tenancies Tribunal

Application 2023-0733-NL

Decision 23-0733-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 6-November-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, did not attend the hearing. The applicant’s authorized representative, [REDACTED] ([REDACTED]) attended by teleconference.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as “the tenants” attended by teleconference. The respondent’s authorized representative, [REDACTED] ([REDACTED]) also attended.

Preliminary Matters

4. The landlord submitted 2 affidavits with his application stating that he served respondent 1 and respondent 2 with the notice of hearing via prepaid registered mail; ([REDACTED]) and ([REDACTED]) respectively on 17-August-2023 (LL#1). The respondents confirmed receiving the documents. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written rental agreement that commenced on 1-January-2018. Rent is currently \$1640.00 per month and is due on the first of the month. A security deposit of \$900.00 was paid on 1-January-2018 and is still in the landlord’s possession.
6. The landlord’s representative amended the application to increase rent from \$61,880.00 to \$66,800.00 to include rent for the months of September, October and November 2023 and also to increase the rental penalty from \$2200.00 to \$2500.00 to include the months of September, October and November.
7. Security deposit will be addressed if vacant possession is granted.

Issues before the Tribunal

8. The landlord is seeking:
 - An order for vacant possession of the rented premises
 - Rent paid and late fees \$69,300.00

- Other (legal fees) \$15,646.94
- Security deposit applied against monies owed \$900.00

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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 18: Notice of termination of rental agreement and Section 14; Security deposit. Also, relevant and considered is Section 12-1 of the *Residential Tenancies Policy*; Recovery of fees.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

11. The landlord submitted a copy of a termination notice issued to the tenants on a *Landlord's Notice to Terminate – Standard* form (LL#2). It was dated for 24-May-2023 under section 18; Notice of termination of rental agreement to vacate the premises by 31-August-2023.

Analysis

12. The notice was served under Section 18, of the *Residential Tenancies Act, 2018*, which states:

Notice of termination of rental agreement

18. (2) *A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises*

(a) *not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*

(b) *not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*

(c) *not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

.....

(9) *In addition to the requirements under section 34, a notice under this section shall*

(a) *be signed by the person providing the notice;*

(b) *be given not later than the first day of a rental period;*

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

13. The termination notice submitted by the landlord meets the requirements of not less than 3 months before the end of a rental period where the residential premises is rented month to month. In accordance with the *Residential Tenancies Act*, 2018 the termination notice is a valid notice.

14. I find that the tenants should have vacated the premises by 31-August-2023

Decision

15. The landlord's claim for an order of vacant possession succeeds.

Issue # 2: Rent Paid and Late Fees \$69,300.00

Relevant Submission

16. The landlord's representative testified that rent is now outstanding in the amount of \$66,800.00 dating back to April 2019 and a rental penalty of \$2500 is also outstanding dating back to September-2021. The landlord submitted a rent ledger (up to end of August 2023) to support his claim (Exhibit C). See below:

| Exhibit " C to Application for Dispute Resolution | | | | | |
|---|-------------|------------------|---------------------|--|--|
| Rent Ledger | | | | | |
| Rent Ledger - [REDACTED] | Rent Amount | Number of Months | Total Amount Owning | | |
| Rent at \$1,200 | \$ 1,200 | 45 | \$ 54,000 | | |
| Rent at \$1,640 | \$ 1,640 | 7 | \$ 11,480 | Effective Feb. 1, 2023 rent increased to \$1,640 | |
| Rent paid | \$ (900) | 4 | \$ (3,600) | | |
| | | | <u>\$ 61,880</u> | | |
| Rental Penalty | 100 | 22 | \$ 2,200 | Sept 10, 2021 signed acknowledgement | |
| Total Rent and Rental Penalty Outstanding | | | <u>\$ 64,080</u> | | |

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$66,800.00 for the period of 1-April-2019 to 30-November-2023 and rental penalties are also outstanding in the amount of \$2500.00 dating back to September 2021. The landlord's representative testified that the landlord had a legal agreement with the tenants whereby they agreed to pay \$100.00 per month in late fees. The landlord is seeking a total of \$69,300.00 which brings outstanding amounts up to the end of November 2023.

Tenant's Position

18. The tenants did not dispute the landlords claim for outstanding rent in the amount of \$66,800.00 however they did dispute the rental penalty amount of \$2500.00. The tenant's representative stated that late fees should not exceed the amount as set out by the Minister.

Analysis

19. Section 19 of the *Residential Tenancies Act, 2018* 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*

20. Non-payment of rent is a violation of the rental agreement. The landlord's representative testified that there is outstanding rent in the amount of \$66,800.00 for the period of 1-April-2019 to 30-November-2023. The tenants did not dispute the landlord's claim for rent and as such, rent shall be awarded.
21. The rental ledger is amended to show a daily rate for November as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-April-2019 to 6-November-2023 in the amount of \$65,483.52.

| Rental Ledger 2023-0733-NL | | | |
|----------------------------|----------|------------|-------------|
| Date | Action | Amount | Total |
| August 31, 2023 | Balance | | \$61,880.00 |
| September 1, 2023 | Rent due | \$1,640.00 | \$63,520.00 |
| October 1, 2023 | Rent due | \$1,640.00 | \$65,160.00 |
| November 1-6, 2023 | Rent due | \$323.52 | \$65,483.52 |

Daily rate: \$1640 x 12 mths = \$19680
\$19680 / 365 days = \$53.92 per day

22. I find that the tenants are responsible for outstanding rent in the amount of \$65,483.52 for the period of 1-April-2019 to 6-November-2023.
23. The tenants shall pay a daily rate of \$53.92 until such time as the landlord regains possession of the property.
24. With regards to the rental penalty of \$2500.00, the landlord's representative stated that the written legal agreement his client had with the tenant's contracts out the *Residential Tenancies Act, 2018*. In accordance with Section 3(1) of the *Residential Tenancies Act, 2018*; Application of Act, the Act applies where the relationship of landlord and tenant exists in respect of residential premises. As a residential tenancy relationship between the landlord and the tenant has been established, the written legal agreement between the landlord and the tenants do not contract out the *Residential Tenancies Act, 2018* and as such, the landlord can only charge late fees as set out in Section 15 of the *Residential Tenancies Act, 2018* and Section 12-1 of the *Residential Tenancies Policy*.
25. 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.*
26. 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*
27. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF states;*

Late payment fee:

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.

28. The landlord's rental ledger shows that the tenants have been in arrears since 1-April-2019. I find that the maximum allowable late fee of \$75.00 is a legitimate charge based on the payment fee as stated above.
29. I find that the landlord is entitled to the maximum allowable late payment fee of \$75.00 as set by the minister.

Decision

30. The landlord's claim for outstanding rent and rental penalty (late fees) succeeds in the amount of \$65,558.52.

Issue # 3: Other (Legal Fees) \$15,646.94

Relevant Submission

31. The landlord's representative testified that there are paid and outstanding legal bills including estimated hearing costs in the amount of \$15,646.94. The landlord submitted a breakdown of the costs to support his claim (Exhibit D). See below:

Exhibit "D" to Application for Dispute Resolution Other Amounts Claimed

| Invoice Number | Amount Billed | Amount Paid | Amount Owing | Notes |
|----------------------|--------------------|-------------------|-------------------|-------|
| 90828776 | \$1,725.00 | \$1,725.00 | \$0.00 | |
| 90872736 | \$575.00 | \$575.00 | \$0.00 | |
| 90885977 | \$71.02 | \$71.02 | \$0.00 | |
| 90897527 | \$905.63 | \$905.63 | \$0.00 | |
| 90920833 | \$402.50 | \$402.50 | \$0.00 | |
| 90942403 | \$300.46 | \$300.46 | \$0.00 | |
| 90953334 | \$1,775.31 | \$1,775.31 | \$0.00 | |
| 91003077 | \$690.00 | \$690.00 | \$0.00 | |
| 91019601 | \$862.50 | \$862.50 | \$0.00 | |
| 91024899 | \$747.50 | \$0.00 | \$747.50 | |
| 91037383 | \$1,146.55 | \$0.00 | \$1,146.55 | |
| 91049160 | \$4,447.05 | \$0.00 | \$4,447.05 | |
| Prebill 5589213 | \$498.42 | n/a | \$498.52 | |
| Invoice Total | \$14,146.94 | \$7,307.42 | \$6,839.62 | |

| | |
|-------------------------|---------------------|
| Estimated hearing Costs | 1,500.00 |
| Total | \$ 15,646.94 |

Analysis

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

Hearing expenses may not include

- Legal fees
- Hourly wage for time spent to prepare for, or attend a hearing – (this is considered to be incurred under the normal course of doing business)
- Parking fees
- Expenses for giving notice of termination, warnings or letters.

33. I find that the landlord's legal fees do not fall under the *Residential Tenancies Act, 2018* and as such, should be addressed in another court of competent jurisdiction.

Decision

34. The landlord's claim for Other (legal fees) does not succeed.

Issue # 4: Security Deposit applied against monies owed \$900.00

Analysis

35. Section 14 of the *Residential Tenancies Act, 2018* states:

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.

36. The landlord's claim for losses has been successful as per paragraph 29, and as such the security deposit shall be applied against monies owed.

Decision

37. The security deposit of \$900.00 shall be applied against monies owed.

Issue # 4: Hearing Expenses \$20.00

38. The landlord paid an application fee of \$20.00 to Residential Tenancies and provided a copy of the receipt (LL#3).

39. As the landlord's claim has been partially successful, the tenants shall pay the \$20.00.

Decision

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

Summary of Decision:

41. The tenants shall pay the landlord \$64,678.52 as follows:

| | |
|-----------------------------|--------------------|
| Rent..... | \$65,483.52 |
| Late fees | 75.00 |
| Hearing expenses..... | 20.00 |
| Less Security deposit | <u>\$900.00</u> |
| Total..... | <u>\$64,678.52</u> |

42. The tenants shall pay a daily rate of rent beginning 7-November-2023 of \$53.92, until such time as the landlord regains possession of the property.

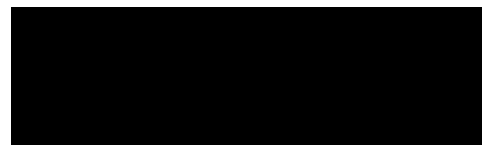
43. The tenants shall vacate the property immediately.

44. The tenants 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.

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

November 20, 2023

Date



Pamela Pennell
Residential Tenancies Office