

Residential Tenancies Tribunal

Application 2023-0737-NL

Decision 23-0737-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on September 6, 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not attend the hearing and were not represented. I was unable to reach [REDACTED] by telephone ([REDACTED]) and [REDACTED] by telephone ([REDACTED]) at the start of the hearing.
4. The details of the claims were presented as an oral monthly rental agreement with rent set at \$375.00, due on a bi-weekly basis of each month. There was no security deposit collected on this tenancy. The tenants has resided at [REDACTED] since October 2022. The landlord initially issued a termination notice on 4 August 2023 to terminate the tenancy on 14 August 2023 under section 19 of the *Residential Tenancies Act*, 2019 (LL#1), as well as on 11 August 2024 to terminate the tenancy on August 24, 2023 (LL#2). The tenants were served a copy of the Application for Dispute Resolution via electronic mail ([REDACTED]) on 21 August 2023 under section 42 of the *Residential Tenancies Act*, 2018 (LL#3).
5. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The landlord amended the application at the hearing and stated the rental arrears owed is \$2,625.00, including September 2023 rent.

7. The tenants were not present or represented at 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 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 she has been properly served. The landlord submitted an affidavit stating that she served the tenants a copy of the Application for Dispute Resolution, by electronic mail, on 21 August 2023 (LL#3). As the tenants were properly served, and as further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

8. The landlord is seeking the following:
- An order for payment of rent in the amount of \$2,625.00;
 - An order for vacant possession of the rented premises;
 - An order for late fees in the amount of \$1,130.00; &
 - Hearing expenses in the amount of \$20.00.

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 case are S. 15, 19, 34 and 35 of the *Residential Tenancies Act*, 2018, and rule 29 of the *Rules of the Supreme Court*, 1986.

Issue 1: Rent Owed- \$2,625.00

11. The landlord stated that there is an oral bi-weekly rental agreement established with the tenants and that the tenants have occupied the rental premises since October 2022. The landlord also offered evidence regarding concerns with payment of rent in November 2022 (LL#4).
12. The landlord summarized the tenant's payment of rent has not been consistent and untimely, resulting in rental arrears. The tenant was thought to be still residing in the residence on the date of the hearing (6 September 2023).
13. The landlord offered testimony that rent is currently outstanding in the amount of \$2,625.00.

14. The landlord submitted a rental ledger (LL# 5) regarding rental arrears between October 2022 and August 2023. This rental ledger indicates the tenants were last at a \$0 balance on 3 November 2022, the tenants had made \$5,250.00 payments between November 2022 and June 2023. By 31 August 2023, the tenants owed \$2,250.00 in rental arrears with last payment being on 13 June 2023 in the amount of \$750.00. The ledger presented by the landlord suggests the following information:

Date	Transaction	Paid	Balance
5 June 2023	½ rent due- \$375.00		\$1,125.00
13 June 2023	Payment	\$750.00	\$375.00
19 June 2023	½ rent due- \$375.00		\$750.00
3 July 2023	½ rent due- \$375.00		\$1,125.00
17 July 2023	½ rent due- \$375.00		\$1,500.00
1 August 2023	½ rent due- \$375.00		\$1,875.00
15 August 2023	½ rent due- \$375.00		\$2,250.00

Analysis

15. Non-payment of rent is a violation of the rental agreement. The landlord offered testimony that the tenants remain in the residence on the date of the hearing (6 September 2023). This tribunal does not consider future rent.
16. The landlord submitted termination Notice under Section 19, notice where failure to pay rent with a requested possession of the premises by 14 August 2023 (LL#1), followed by a subsequent termination Notice issued on 11 August 2023 with a requested possession of the premises by 24 August 2023. As such, rent was due for August 2023 and included to the balance of rental arrears owing by the tenant equaling **\$2,250.00** including up to 31 August 2023.
17. Rent for September 2023 can only be calculated up to and including the day of the hearing (6 September 2023). That calculation is ($\$750.00 \times 12 \text{ months} = \$9,000.00 \div 365 \text{ days} = \$24.65 \text{ per day} \times 6 \text{ days} = \147.90). Rent for 1 September 2023 – 6 September 2023 is **\$147.90**.
18. I accept the landlord's claim that the tenant has not paid rent as required. The tenants owe **\$2,397.90 (\$2,250.00 + 147.90)**. Current balance of rental arrears is **\$2,397.90**.
19. Additionally, the tenants are responsible for rent on a daily basis in the amount of **\$24.65** beginning on 7 September 2023 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

20. The landlord's claim for a payment of the rent succeeds in the amount of **\$2,397.90**.

Issue 2: Vacant Possession of Rented Premises

21. The landlord submitted termination Notice under Section 18, notice where failure to pay rent. The notice was signed and dated on 11 August 2023 and requested possession of the premises by 24 August 2023 (LL# 2).

Analysis

22. 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.

23. Section 19 of the *Act* allows a landlord to terminate a rental agreement when rent is overdue by 5 days or more. The tenants are required to vacate on a specified date not less than 10 days after the notice is served.

24. The tenants were in rental arrears in excess of the 5 days when the notice was served on 11 August 2023 to be out of [REDACTED] on 24 August 2023 (LL#2). The landlord offered testimony the tenants remained in the property following being issued the notice to vacate and has been charged additional rental payments for September 2023. According to the landlord's rent records, on 11 August 2023, the tenants had been in rental arrears for more than two months and the landlord was therefore in a position to terminate the rental agreement under this section of the Act.
24. I find the termination notice is a valid notice.

Decision

25. The landlord's claim for an order for vacant possession does succeed.

Issue 3: Late Fees \$1,130.00

26. The landlord is seeking late fees in the amount of \$1,130.00 and the charges have been extracted from the rental ledger (LL# 5) that between 16 November 2022 and 2 August 2023, there had been 18 separate late fee charges to the tenants balance equaling \$980.10. In addition, the landlord amended the application during the hearing to include late fees for September 2023.

Analysis

27. 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 payments payment periods to a maximum of \$75.00

28. The rental ledger continued to reflect late fee amounts added to rental arrears above the maximum allowable in accordance with the *Act*. I find that the landlord is entitled to the maximum late payment fee of \$75.00 as set by the minister.

Decision

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

Issue 4: Hearing Expense- \$20.00

30. The landlord's paid an application fee of \$20.00 (LL#6).

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

Decision

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

Summary of Decision

33. The landlord is entitled to the following:

- A payment of **\$2,397.90**,

a) Rent owing.....	\$2,397.90
b) Late Fees.....	\$75.00
c) Hearing expenses.....	<u>\$20.00</u>
d) Total.....	<u>\$2,492.90</u>

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of **\$24.65**, beginning by 7 September 2023 and continuing to the date the landlord obtains vacant possession of the rental unit,
- The tenants shall also 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.

15 September 2023

Date

