

Residential Tenancies Tribunal

Application 2023-0760-NL

Decision 2023-0760-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:47 PM on 25 October 2023 via teleconference.
2. The applicant, [REDACTED] and hereinafter referred to as "the landlord", attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", attended the hearing.
4. The details of the claims were presented as a 12 month fixed term written rental agreement with rent set at \$1,800.00 and due on the 1st of each month (**Exhibit L # 1**) which has evolved into a monthly agreement. There was a security deposit collected on this tenancy which the landlord was still in possession, in the amount of \$800.00, which was collected in May 2013. The tenant moved into the rental unit located at [REDACTED] [REDACTED], on 1 May 2013 until 4 August 2023.
5. The landlord issued a termination notice in August 2022 to terminate the tenancy on 19 August 2022 under section 19 of the *Residential Tenancies Act, 2018* (**Exhibit L # 2**). The tenant was served by electronic mail, on 21 September 2023 (**Exhibit L # 3**) an application for dispute resolution at [REDACTED].
6. 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

7. The landlord did not amend his application at the hearing, seeking rental arrears owing (\$2,700.00), along with \$20.00 hearing expense.

8. The landlord offered testimony during the hearing and did not call any witnesses.
9. The tenant offered testimony during the hearing and did not call any witnesses.

Issues before the Tribunal

10. The landlord is seeking the following:

- An order for payment of rent in the amount of \$2,700.00; &
- An order for hearing expenses of \$20.00

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*
12. Also relevant and considered in this case is S. 19, 34, 35, and 42 of the *Residential Tenancies Act, 2018*, and rule 29 of the *Rules of the Supreme Court, 1986*.

Issue 1: Rent Owing- \$2,700.00

Landlord position

13. The landlord stated that there is currently written monthly rental agreement established with the tenant, who has occupied the rental premises since 1 May 2013 (**Exhibit L # 1**).
14. The landlord testified the tenant had a previous concern with lack of payment of rent which resulted in the landlord indicating concerns with the tenant's lack of payment of rent as required (**Exhibit L # 2**).
15. The landlord offered testimony the last rental payment made by the tenant was in June 2023 and the tenant did not pay rent for July 2023 or August 2023.
16. The landlord testified the tenant no longer resided at [REDACTED] [REDACTED], and stated, "it appears she moved out 4 August 2023". The landlord suggested he was seeking the full amount of monthly rent for July and August due to subsequent renters not taking possession of [REDACTED] until the middle of August 2023 and alleged work and clean-up had to be completed on the property.
17. The landlord stated he had full possession of the rental unit by 5 August 2023.

Tenant's position

18. The tenant offered testimony that she did not pay rent for July 2023 or any amount for August 2023.
19. The tenant confirmed she moved out of [REDACTED] by 4 August 2023 and expressed her willingness to pay the July 2023 rental arrears but did not understand why she could be responsible to pay for the full month of August 2023.

Analysis

20. Non-payment of rent is a violation of the rental agreement. The landlord was seeking outstanding rent for July 2023 (\$1,800.00) and half August 2023 (\$900.00).
21. The landlord and tenant both stated the respondent was out of the rental by 4 August 2023. Furthermore, the landlord stated he had full possession of the rental unit by 5 August 2023. While the landlord stated alleged repairs had to be completed following the respondent's exit of [REDACTED], he did not amend his Application for Dispute Resolution to include damages, nor did he provide any evidence.
22. Rent for August 2023 can only be calculated up to and including the day both the applicant and respondent testified the tenant left the property (4 August 2023). That calculation is $(\$1800 \times 12 \text{ months} = \$21,600.00 \div 365 \text{ days} = \$59.17 \text{ per day} \times 4 \text{ days} = \$95.04)$. Rent for 1 August 2023 – 4 August 2023 is **\$236.68**.
23. I accept the landlord's claim that the tenant has not paid rent as required. I do not accept the tenant owes rental arrears in the amount of \$2,700.00. The tenant owes \$2,036.68 (July 2023 rent, \$1,800.00 + 1 August – 4 August 2023 rent, \$236.68). Current Balance of rental arrears is **\$2,036.68**.

Decision

24. The landlord's claim for a payment of the rent succeeds in the amount of **\$2,036.68**.

Issue 2: Hearing Expense

25. The landlord offered evidence that hearing expense included the application fee of \$20.00 and requested the cost of registered mail be included in with the hearing expenses. That said, while the receipt for the \$20.00 application for hearing was entered into evidence (**Exhibit L # 4**), there was no evidence related to the registered mail fee.
26. I find the landlord's claim for hearing expense fee succeeds in the amount of \$20.00.

Decision

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

Summary of Decision

28. The landlord is entitled to the following:

- A payment of **\$2,056.68**, as determined as follows:

a) Rent owing	\$2,036.68
b) Hearing Expense.....	\$20.00
c) Total.....	<u>\$2,056.68</u>

3 November 2023

Date

Michael J. Reddy
Residential Tenancies Office