

Residential Tenancies Tribunal

Application 2023-0790-NL

Decision 23-0790-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 25 September 2023 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing (*Absent and Not Represented*).
4. The details of the claims were presented as a written monthly rental agreement with rent set at \$832.00 and due on the 1st of each month. There was a security deposit collected on this tenancy in the amount of \$372.00, still in possession of the landlord, and the tenant has resided at [REDACTED] since 21 July 2021. On the date of hearing, the tenant remained in the unit. The landlord issued the tenant a letter in regards to outstanding rental arrears owing and the expectation that rent be paid on the 1st of each month, along with a notice to terminate under section 19 of the *Residential Tenancies Act, 2018* (**Exhibit L # 1**). The tenant was served by registered mail on 30 August 2023, an application for dispute resolution related to rental arrears outstanding and late fees (**Exhibit # 2**).
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 her application at the hearing to the new amount outstanding in rental arrears is **\$11.00** up to and including 30 September 2023.

7. The tenant was not present or represented at the hearing. This tribunal's policies concerning notice requirements and hearing attendance has been adopted from the Rules of the Supreme Court, 1986.
 - a. Rule 29.05(2)(a) states, *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, 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 he/she has been properly served.*
8. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing **30 August 2023** by registered mail (**Exhibit L # 2**). In addition, the landlord submitted copies of the tracking histories with her application. Those tracking histories show that notice cards were left for the tenant indicating that the notices were available for pick-up at the Post Office, but they were never collected by the tenant (**Exhibit L # 3**).
9. The landlord offered testimony during the hearing that the registered mail sent to the tenant had returned to sender.
10. Section 42(6) of the *Residential Tenancies Act*, 2018 states:

Application to director

(6) For the purpose of this section, where a copy of the application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the copy of the application was prepaid and properly addressed and sent.
11. During the hearing, a telephone call was placed to the tenant to the number on file (██████████) at 1:51 PM, at which time the number was not in service. A subsequent telephone call was placed to the tenant to a number provided by the landlord (██████████) at 1:53 PM. There was no contact with the respondent.
12. As the tenant was properly served with the application for dispute resolution, attempts to contact the tenant were made on the date of the hearing (25 September 2023), and as any further delay in these proceedings could unfairly disadvantage the landlord application, I proceeded in the tenant's absence.

Issues before the Tribunal

13. The landlord is seeking the following:
 - An order for payment of rent in the amount of **\$11.00**;
 - An order for vacant possession of the rented premises;
 - Late Fees in the amount of **\$75.00**; &
 - Hearing Fee in the amount of **\$20.00**.

Legislation and Policy

14. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
15. Also relevant and considered in this case is sections, 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- \$11.00

16. The landlord stated that there is a written monthly rental agreement established with the tenant and that the tenant has occupied the rental premises since July 2021.
17. The landlord offered testimony that rent is outstanding in the amount of \$11.00, the tenant has carried forward in rental arrears since 1 July 2023 and last had a zero balance on 1 June 2023. The landlord stated that in July 2023, rent increased from \$815.00 to \$832.00 and, since this time, the tenant has not paid the \$17.00 extra per month. The landlord offered evidence of a rental ledger related to the tenant (**Exhibit L # 4**).
18. The ledger presented by the landlord suggests the following information:

Date	Transaction	Paid	Balance
1 August 2023	Rent due		\$849.00
1 August 2023	Payment	\$407.50	\$441.50
1 August 2023	Payment	\$407.50	\$34.00
1 September 2023	Rent due		\$866.00
1 September 2023	Payment	\$407.50	\$458.00
1 September 2023	Payment	\$407.50	\$51.00
8 September 2023	Payment	\$40.00	\$11.00

Analysis

19. The landlord provided evidence of a letter dated 23 August 2023 for the tenant, indicating the expectations that rent was due on the first of each month and that she held an outstanding balance of \$34.00 (**Exhibit L # 1**).
20. The landlord had amended her application to include rent up until September 2023. This tribunal does not consider future rent.
21. Rent for September 2023 can only be calculated up to and including the day of the hearing (25 September 2023). That calculation is $(\$832.00 \times 12 \text{ months} = \$9,984.00 \div 365 \text{ days} = \$27.35 \text{ per day} \times 25 \text{ days} = \$529.23)$. Rent for 1 September 2023 – 25 September 2023 is **\$683.75**.

22. I accept the landlord's claim that the tenant has paid rent. I also accept testimony and evidence that the tenant carried forward rental arrears in the amount of \$34.00 for the period ending 31 August 2023. I do not accept there are rental arrears outstanding on the date of the hearing (25 September 2023).
23. I calculate that the tenant has a credit of **\$97.50cr** to the date of the hearing (\$34.00 owing for the period ending 31 August 2023, plus rent due between 1 September 2023 and 25 September 2023 equaling \$683.75, less the payments of \$407.50 and \$407.50 on 1 September 2023= \$97.25cr).
24. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$27.35** beginning on 26 September 2023 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

25. The tenant has a rent credit in the amount of **\$97.50cr** for the period ending on 25 September 25, 2023.
26. The tenant shall pay a daily rent in the amount of **\$27.35**, beginning 26 September 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

27. The landlord submitted a copy of a termination notice which was sent registered mail (**Exhibit L # 2**).
28. This termination notice was issued under section 19 of the *Residential Tenancies Act*, 2018 and it has an effective termination date of 3 September 2023.
29. The landlord stated the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

Analysis

30. 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.

31. The tenant was in rental arrears in excess of the 5 days when the notice of hearing was served on 30 August 2023 to be out of [REDACTED]. The tenant remains in the property.

32. According to the landlord's rent records, on 31 August 2023 the tenant was in arrears in the amount of \$34.00 and had been in arrears since the beginning of July 2023.

33. As the tenant has not paid off the arrears prior to being issued termination date on 30 August 2023 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

34. I find the termination notice is a valid notice.

Decision

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

36. 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: Late Fees- \$75.00

37. The landlord offered evidence of a rental ledger prior to the hearing (**Exhibit L #3**). During the hearing, the landlord offered testimony that the tenant has carried late fees since July 2023 as she was last at a zero balance on 1 June 2023.

38. Section 15 of the *Residential Tenancies Act*, 2018 offers clear direction regarding fees for failure to pay rent. As noted in section 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”.

39. 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.

40. I find that the tenant has owed late payment fees in the maximum amount since July 2023 and the landlord is entitled to the maximum amount late fee of \$75.00.

Decision

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

Issue 4: Hearing Expenses- \$20.00

42. The landlord paid an application fee of \$20.00 (**Exhibit L # 5**).

Decision

43. As the landlord’s claim has been successful, the tenant shall pay her hearing expense of **\$20.00** for the costs of filing this application.

Summary of Decision

44. The landlord is entitled to the following:

- An order for vacant possession of the rented premises;
- A payment of a daily rate of rent in the amount of \$27.35, beginning by 26 September 2023 and continuing to the date the landlord obtains vacant possession of the rental unit;
- The tenant 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; &
- The tenant has a rent credit for the period ending 25 September 2023 in the amount of \$97.25cr, determined as follows:

a) Rent credit.....\$97.25cr

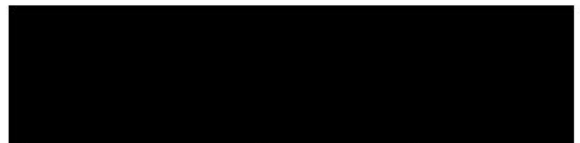
b) Less: Late Fees.....\$75.00

c) Less: Hearing Expenses.....\$20.00

d) Total Credit.....\$2.25cr

11 October 2023

Date



Residential Tenancies Office