

Residential Tenancies Tribunal

Application 2023-0805-NL

Decision 2023-0805-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 11 October 2023 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED] and hereinafter referred to as "the landlord", attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not attend the hearing.
4. The details of the claims were presented as a written monthly rental agreement with rent set at \$263.00 and due on the 1st of each month. There was no security deposit collected on this tenancy. The tenant moved into the rental unit located at [REDACTED] [REDACTED], on 30 December 2021 and remains in the property on the date of the hearing (11 October 2023).
5. The landlord supplied the tenant information regarding the balance on her account (**Exhibit L # 1**). Following this, the landlord issued a termination notice on 23 August 2023 to terminate the tenancy on 6 September 2023 under section 19 of the *Residential Tenancies Act, 2018* (**Exhibit L # 2**). Additionally, the landlord also issued the tenant an updated Statement of Rent Account specifying the outstanding rental arrears of the tenant (**Exhibit L # 3**). The tenant was served by registered mail, on 25 September 2023 (**Exhibit L # 4**) an application for dispute resolution.
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 amended her application at the hearing, increasing the rental arrears owing (\$3,761.00), along with \$75.00 owing in late fees.
8. The landlord offered testimony during the hearing and did not call any witnesses.
9. The tenant was not present or represented at this hearing and I was unable to reach her by telephone at the start of the hearing. I attempted to reach the tenant at 1:49 PM at a telephone number offered by the landlord (████████) however was unsuccessful. This Tribunal's polices 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 with her application stating she served the tenant, by registered mail, on 25 September 2023. As the tenant was properly served, and as further delay in the proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

10. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$4,036.00;
 - An order for vacant possession of the rented premises;
 - An order for payment of late fees of \$75.00; &
 - An order for hearing expenses

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- \$4,036.00

Relevant Submissions

13. The landlord stated that there is a written monthly rental agreement established with the tenant, who has occupied the rental premises since 30 December 2021 (**Exhibit L # 5**).

14. The landlord testified the tenant had not paid a security deposit on this tenancy, as this was the policy of the [REDACTED] was not to collect security deposits on units. The landlord offered evidence that attempts were made to rectify the rental arrears as a Statement of Rent Account was sent to the tenant (**Exhibit L # 1 and Exhibit L # 3**).
15. This evidence indicates the tenant last carried a \$0.00 balance in rent owing on 1 January 2022. The landlord offered testimony the tenant started to incur rental arrears since February 2022 and last rental payment made by the tenant was in July 2023. The Statement of Rent Account indicates the following information:

Date	Transaction	Debit	Credit	Balance
1 May 2023	Rent Due	\$263.00		\$2,971.00
1 June 2023	Rent Due	\$263.00		\$3,234.00
1 July 2023	Rent Due	\$263.00		\$3,497.00
17 July 2023	Payment		\$250.00	\$3,247.00
1 August 2023	Rent Due	\$263.00		\$3,510.00
1 September 2023	Rent Due	\$263.00		\$3,773.00
1 October 2023	Rent Due	\$263.00		\$4,036.00

Analysis

16. Non-payment of rent is a violation of the rental agreement. The landlord has amended the claim at the outset to add rent to include rent up until October 2023. This tribunal does not consider future rent.
17. The landlord submitted Notice under Section 19 (**Exhibit L # 2**). As such, rent was due 1 September 2023 and rental arrears owing by the tenant equaling **\$3,773.00** including up to 31 September 2023.
18. Rent for October 2023 can only be calculated up to and including the day of the hearing (11 October 2023). That calculation is $(\$263.00 \times 12 \text{ months} = \$3,156.00 \div 365 \text{ days} = \$8.64 \text{ per day} \times 11 \text{ days} = \$95.04)$. Rent for 1 October 2023 – 11 October 2023 is **\$95.04**.
19. 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 \$4,036.00. The tenant owes \$3,868.04. Current Balance of rental arrears is **\$3,868.04**.
20. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$ 8.64** beginning on 12 October 2023 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

21. The landlord's claim for a payment of the rent succeeds in the amount of **\$3,868.04**.

Issue 2: Vacant Possession of Rented Premises

22. The landlord submitted termination Notice under Section 19, notice where failure to pay rent (**Exhibit L # 2**).

Analysis

23. 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.

24. The tenant had been in rental arrears in excess of the 5 days when the notice was served on 23 August 2023 to be out of [REDACTED] on 6 September 2023. The tenant remains in the property following being issued the notice to vacate and has been charged additional rental payment for October 2023. The termination notice is a valid notice.

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

Decision

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

Issue 3: Late Fees - \$75.00

27. The landlord has assessed late fees in the amount of \$75.00.

Analysis

28. 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 agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

29. 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.*

30. As the tenant has been arrears since 1 February 2022 up until the date of this hearing (11 October 2023), I find the landlord is entitled to a payment of late fees in the maximum amount of \$75.00 as determined by the minister.

Decision

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

Issue 4: Hearing Expense

32. 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 # 6**), there was no evidence related to the registered mail fee.

33. I find the landlord's claim for hearing expense fee succeeds in the amount of \$20.00.

Decision

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

Summary of Decision

35. The landlord is entitled to the following:

- A payment of **\$3,963.04**, as determined as follows:

a) Rent owing	\$3,868.04
b) Late Fees.....	\$75.00
c) Hearing Expense.....	\$20.00
d) Total.....	<u>\$3,963.04</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$8.64, beginning by 12 October 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.

19 October 2023

Date

Michael J. Reddy
Residential Tenancies Office