

Residential Tenancies Tribunal

Application 2023-0851-NL
Application 2023-0861-NL

Decision 2023-0851-NL
Decision 2023-0861-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:13 AM on 6 October 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], 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 written monthly rental agreement with rent set at \$1,850.00 and due on the 1st of each month. There was a security deposit in the amount of \$900.00 collected on 24 August 2023 which the landlord was still in possession. The tenant moved into the rental unit located at [REDACTED] [REDACTED], on 24 August 2023 and remains in the property on the date of the hearing (6 October 2023).
5. The landlord issued a termination notice on 5 September 2023 to terminate the tenancy on 15 September 2023 under section 19 of the *Residential Tenancies Act, 2018* (**Exhibit L # 1**), followed by a second termination the tenancy notice on 8 September 2023 to terminate the tenancy on 19 September 2023 under section 19 of the Act (**Exhibit L # 2**). The tenant was served electronically at [REDACTED], on 15 September 2023 (**Exhibit L # 3**) 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 and her husband both offered testimony during the hearing and did not call any witnesses. The tenant offered verbal testimony during the hearing and did not call any witnesses.

Issues before the Tribunal

9. The landlord is seeking the following:

- An order for payment of rent in the amount of \$3,761.00;
- An order for vacant possession of the rented premises; &
- An order for payment of late fees of \$75.00

Legislation and Policy

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

Issue 1: Rent Owing- \$3,761.00

Landlord position

12. The landlord stated that there is a written monthly rental agreement established with the tenant, who has occupied the rental premises since 24 August 2023 (**Exhibit L # 4**).
13. The landlord testified the tenant had paid the security deposit on 24 August 2023 prior to moving in to [REDACTED]. Following this, the landlord stated the tenant has failed to pay rent for both September 2023 and October 2023. The landlord claimed on 4 September 2023, her husband spoke with the tenant about the expectations of rent being due on the first of each month and attempted to clear up any rental arrears.

14. The landlord submitted an updated rental ledger (**Exhibit L # 5**) regarding rental arrears owing up until the date of the hearing (6 October 2023). This ledger indicates the following information:

Date	Transaction	Amount Due	Amount Paid	Balance
24 August 2023	Deposit paid	\$900.00	\$900.00	\$0.00
1 September 2023	September rent due	\$1,850	\$0.00	\$1,850.00
19 September 2023	Late Fees	\$39.00	\$0.00	\$1,889.00
1 October 2023	October rent due	\$1,850.00	\$0.00	\$3,739.00
1 October 2023	Late Fees	\$22.00	\$0.00	\$3,761.00

Tenant position

15. The tenant offered testimony that she had not paid rent for as required and stated, “what they said is true” in regards to failure to pay rent as required on the first of each month.

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 termination Notice under Section 19, notice where failure to pay rent with a requested possession of the premises by 19 September 2023 (**Exhibit L # 2**). As such, rent was due 1 September 2023 and rental arrears owing by the tenant equaling **\$1,850.00** including up to 31 September 2023.

18. Rent for October 2023 can only be calculated up to and including the day of the hearing (6 October 2023). That calculation is $(\$1,850.00 \times 12 \text{ months} = \$22,200.00 \div 365 \text{ days} = \$60.82 \text{ per day} \times 6 \text{ days} = \$364.92)$. Rent for 1 October 2023 – 6 October 2023 is **\$364.92**.

19. I accept the landlord’s claim that the tenant has not paid rent as required. The tenant owes **\$2,214.92**. Current Balance of rental arrears is **\$2,214.92**.

20. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$ 60.82** beginning on 7 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 **\$2,214.92**.

Issue 2: Vacant Possession of Rented Premises

22. The landlord submitted termination Notice under Section 19, notice where failure to pay rent. The notice was signed and dated on 8 September 2023 and requested possession of the premises by 19 September 2023 (**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 8 September 2023 to be out of [REDACTED] on 19 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.

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

Decision

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

Issue 3: Late Fees - \$75.00

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

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

28. 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.

29. As the tenant has been arrears since 5 September 2023 up until the date of this hearing (6 October 2023), I find the landlord is entitled to a payment of late fees in the amount of \$65.00 as determined by the minister.

Decision

30. The landlord's claim for late fees succeeds in the amount of **\$65.00**.

Summary of Decision

33. The landlord is entitled to the following:

- A payment of **\$2,279.92**, as determined as follows:

a) Rent owing	\$2,214.92
b) Late Fees.....	\$65.00
c) Total.....	<u>\$2,279.92</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$60.82, beginning by 7 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.

13 October 2023

Date

Michael J. Reddy
Residential Tenancies Office

