

Residential Tenancies Tribunal

Application 2023-0948-NL

Decision 23-0948-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 14-November-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” attended by teleconference.

Preliminary Matters

4. The original application by the tenants (2023-0940-NL) was postponed due to improper service and the counter claim by the landlords (2023-0948-NL) was heard. The landlords did not wish to waive service thus the files were unmarked as counters and the issues relevant to application 2023-0948-NL only were dealt with during the hearing on 14-November-2023.
5. The landlords submitted 2 affidavits with their application stating that they served the respondents with the notice of hearing via prepaid mail: ([REDACTED]) and ([REDACTED]) on 27-October-2023 (LL#1). The respondents confirmed receipt of the documents on 30-October-2023. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. There is a written month to month rental agreement which commenced on 1-April-2019. Rent is \$1100.00 per month, due on the first day of each month. A security deposit of \$550.00 was paid on 1-April-2019 and is in the possession of the landlord.
7. The landlords amended their application to increase rent from \$2200.00 as per the application to \$3300.00 to include outstanding rent for the month of November 2023. The landlords also amended the amount they are seeking for late fees to \$75.00. The landlords are also seeking hearing expenses in the amount of \$47.57. In the event of a vacant possession order, the security deposit will be dealt with.

Issues before the Tribunal

8. The landlord is seeking:
 - a. Rent paid \$3300.00
 - b. Late fees \$75.00
 - c. An order for vacant possession of the rented premises
 - d. Hearing expenses \$47.57
 - e. Security deposit applied against monies owed \$550.00

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*. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 19: Notice where failure to pay rent. Also, relevant and considered is the following section of the *Residential Tenancies Policy Manual*: Section 12-1: Recovery of Fees.

Issue # 1: Rent Paid \$3300.00

Relevant Submissions

10. The landlords testified that rent is outstanding in the amount of \$3300.00 covering the period of 1-September to 30-November 2023 and in support of their claim submitted a rental ledger (LL#2) as follows:

Rental Ledger 2023-0948-NL			
Date	Action	Amount	Total
August 31, 2023	Balance		\$0.00
September 1, 2023	Rent due	\$1,100.00	\$1,100.00
October 1, 2023	Rent due	\$1,100.00	\$2,200.00
November 1, 2023	Rent due	\$1,100.00	\$3,300.00

Landlord's Position

11. The landlords testified that rent has not been paid since September 2023 and the tenant is now in arrears in the amount of \$3300.00. The landlord is seeking rent paid in the amount of \$3300.00.

Tenant's Position

12. The tenants did not dispute that they owe rent for the months of September to November.

Analysis

13. Non-payment of rent is a violation of the rental agreement. The landlords testified that there are rental arrears in the amount of \$3300.00. Rent is required to be paid by the tenants for the use and occupation of the rented premises. The tenants did not dispute the amount of rental arrears.
14. The rental ledger is amended to show a daily rate for November as this tribunal doesn't consider future rent (see below). I find that the tenants are responsible for outstanding

rent from 1-September to 14-November-2023 in the amount of \$2706.24 and then a daily rate of \$36.16 shall apply as calculated below:

Amended Rental Ledger 2023-0948-NL			
Date	Action	Amount	Total
August 31, 2023	Balance		\$0.00
September 1, 2023	Rent due	\$1,100.00	\$1,100.00
October 1, 2023	Rent due	\$1,100.00	\$2,200.00
November 1-14, 2023	Rent due	\$506.24	\$2,706.24

Daily rate: $\$1100 \times 12 \text{ months} = \13200
 $\$13200 / 365 \text{ days} = \36.16

15. I find that the tenants are responsible for outstanding rent in the amount of \$2706.24 for the period of 1-September to 14-November-2023.

16. I find that the tenants are responsible to pay a daily rate of rent beginning 15-November-2023 of \$36.16, until such time as the landlords regain possession of the property.

Decision

17. The landlord's claim for rent paid succeeds in the amount of \$2706.24.

Issue # 2: Late fees \$75.00

18. The landlord is seeking late fees to be paid in the amount of \$75.00.

Analysis

19. 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 payment periods to a maximum of \$75.00.

20. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF states;*

Late Payment Fee:

A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.

21. The landlord's rental ledger shows that the tenant has been in arrears since 31-August-2023. I find that the maximum allowable late fee of \$75.00 is a legitimate charge based on the payment fee as stated above.
22. I find that the landlords are entitled to the maximum allowable late payment fee of \$75.00 as set by the minister.

Decision

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

Issue # 3: An Order for Vacant Possession of Rented Premises

Relevant submissions:

24. The landlords submitted a termination notice under Section 19; Notice of failure to pay rent. The notice was signed and dated for 20-September-2023 with a termination date of 1-October-2023 (LL#3).

Analysis

25. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice of failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(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

*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.*

(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.

26. The tenants were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 1-October-2023 the tenants were still in arrears. I find that the termination notice meets the requirements of the *Act* and is a valid notice.
27. I find that the tenants should have vacated the property by 1-October-2023.

Decision

28. The landlord's claim for an order for vacant possession of the rented premises succeeds.
29. The tenants shall vacate the premises immediately.
30. The tenants shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

Issue # 4: Hearing Expenses \$47.57

31. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#4). Also, the landlords incurred postal fees in the amount of \$27.57 and submitted receipts (LL#5).
32. As the landlord's claim has been successful, the tenants shall pay the \$47.57.

Decision

33. The landlord's claim for hearing expenses succeeds in the amount of \$47.57.

Item # 5: Security deposit applied against monies owed \$550.00

Analysis

34. The landlord's claim for losses has been successful as per paragraph 17, and as such the application of the security deposit will be dealt with in this decision. Section 14 of the *Residential Tenancies Act, 2018* states:

Security deposit

14(8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

14(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

14(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

- a. the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
- b. the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

Decision

35. The landlords shall apply the security deposit against any monies owed.

Summary of Decision

36. The tenants shall pay the landlords \$2278.81 as follows:

Rent	\$2706.24
Late fees	75.00
Hearing expenses	47.57
Less security deposit	550.00
Total	\$2278.81

37. The tenants shall pay a daily rate of rent beginning 15-November-2023 of \$36.16, until such time as the landlords regain possession of the property.

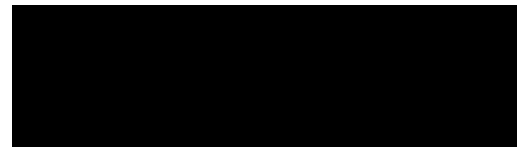
38. The tenants shall vacate the property immediately.

39. The tenants shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

40. The landlords will be awarded an Order of Possession.

December 1, 2023

Date



Pamela Pennell
Residential Tenancies Office