

Residential Tenancies Tribunal

Application 2023-0991-NL

Decision 23-0991-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 07-December-2023.
2. The applicants were [REDACTED] and [REDACTED] hereinafter referred to as the landlords. [REDACTED] attended by teleconference and advised that his wife, [REDACTED] was unavailable and he had permission to speak for her.
3. The respondents were [REDACTED] and [REDACTED] hereinafter referred to as the tenants. [REDACTED] attended by teleconference and advised that her husband, [REDACTED] was unavailable and she had permission to speak for him.

Preliminary Matters

4. This application originally contained a request for an order of vacant possession. However, by the time of the hearing the tenants had already vacated the premises. The application is therefore amended to omit the request for an order of vacant possession.
5. The landlord originally claimed for \$2000 in outstanding rent for the month of October. They seek to amend their application to a total of \$5000 to take into consideration the \$1000 they have received since and the \$4000 owing for the month of November, as detailed in paragraph 9 below. The amendment is granted.

Issues before the Tribunal

6. Do the tenants owe the landlords outstanding rent?
7. Do the tenants owe the landlord late fees?

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

Issue 1: Rent

Landlord's Position

9. The landlord submitted that rent was set at \$4000 and was due at the first of every month. They said that the rent for August was not received until 30-August-2023. The September rent was paid on time, but this was the last time rent was received in full. \$2000 was paid on 17-October-2023, and another \$1000 was paid on 15-November-2023. Therefore, they say that the rent outstanding for October and November totals \$5000 and provide a rental ledger in support of this (LL#1).

Tenant's Position

10. The tenants concede that they owe \$3000 in rent for the month of November. However, they say they have made a good faith attempt to pay the remaining \$2000 from the October rent on 4-October-2023 but that the payment has been tied up by their bank in an unexpected complication. They say they have been following up on this payment, but it has not yet been cleared.

Analysis

11. The tenants referred this tribunal to a piece of evidence that was not provided to the landlord in advance of the hearing in compliance with this tribunal's rules of evidence but had been accepted as an exhibit at a previous hearing by this tribunal. The landlords objected to the admission of this piece of evidence, and I advised parties I would reserve my decision on whether or not I could accept. After consideration I have elected not to accept it. The tenants submitted the document as support for their claim that they made a payment which was held by the relevant financial institution. As explained below, I find this to be irrelevant.
12. I accept the tenants' sworn testimony that they attempted to make the October payment. This may be relevant to the issue of whether or not to award late fees, but it does not change the fact that the money is owed. It is the tenants' responsibility to pay the landlord rent. The landlords have not yet been paid the full amount due. Therefore, the tenants owe the landlord \$5000 in overdue rent.

Issue 2: Late fees

1. 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

13. The late payments on 30-August-2023 and 17-October-2023 alone are sufficient to bring the late fees up to the maximum allowable \$75. The timing of those payments were not disputed by the tenants. The landlord is granted \$75 in late fees.

Decision

14. The landlords are awarded \$5000 in overdue rent.
15. The landlords are awarded \$75 in late fees.
16. As the landlords' claim has been successful, they are entitled to have their costs paid by the tenant. The landlords are awarded \$20 for their application fee.

Summary of Decision

17. The tenant owes the landlord \$5095 as follows:

Rent.....	\$5000
Late fees.....	\$75
Application fee...	\$20
 Total.....	 \$5095

03-January-2024

Date


Seren Cahill
Residential Tenancies Office