

Residential Tenancies Tribunal

Application 2023-1015-NL

Decision 2023-1015-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 7 December 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 and was not represented.
4. The details of the claims were presented as a written monthly rental agreement with rent set at \$1000.00 and due on the 1st of each month. Rent had been set at \$975.00 per month, but effective 1 December 2023, rent increased to \$1,000.00. The tenant was offered appropriate notice of this rental increase as defined by the Act. There was a security deposit collected on this tenancy, still in possession of the landlord, in the amount of \$671.25. The tenant moved into the rental unit located at [REDACTED] [REDACTED], on 1 December 2022 and remains in the property on the date of the hearing (7 December 2023).
5. The landlord issued the tenant a letter dated 24 October 2023 indicating concerns with rental arrears in the amount of \$975.00 (**Exhibit L # 1**). The landlord also issued the tenant a Notice to Terminate Early-Cause on 24 October 2023 requesting the tenant to move out of the rental by 5 November 2023 (**Exhibit L # 2**). The tenant was served by registered mail (**Exhibit L # 3**) an application for dispute resolution on 14 November 2023.
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 his application at the hearing to include rental arrears owing (\$1000.00) between 1 October 2023 and 4 December 2023, along with hearing expenses.
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 unsuccessfully attempted to reach the tenant at 1:48 PM at a telephone number offered by the landlord (████████). This Tribunal's policies 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 his application stating the tenant was served, by registered mail (████████), on 14 November 2023. The Canada Post Tracking information indicates the tenant signed for the delivery package on 15 November 2023 (**Exhibit L # 4**). 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 \$1000.00
 - An order for vacant possession of the rented premises
 - Late fees in the amount 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- \$1000.00

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 1 December 2022.
14. The landlord offered evidence that attempts were made to rectify the rental arrears as prior notice was sent to the tenant to deal with the rental arrears (**Exhibit L # 1**), along with a Notice to Terminate Early-Cause under section 19 of the *Residential Tenancies Act*, 2018, on 24 October 2023 requesting possession of the rental on 5 November 2023 (**Exhibit L # 2**).
15. The landlord stated he was seeking rental arrears between 1 October 2023 and 4 December 2023. In summarizing the tenant's payment of rent, the landlord testified her payment of rent was not always consistent and summarized the [REDACTED] has made several attempts to work with the tenant to rectify this ongoing issue. The landlord stated the tenant was last at a zero balance on 1 September 2023.
16. The landlord stated effective 1 December 2023, there was a rental increase from \$975.00 to \$1,000.00 and the tenant had been provided six month notice in relation to this increase. The landlord suggested on 21 August 2023, the tenant paid \$2,925.00 which resulted in September rent being paid in full. The landlord offered testimony that the tenant's last rental payment made by the tenant was in the amount of \$975.00 on 4 December 2023. The landlord offered a Rental Ledger (**Exhibit # 5**). This evidence indicates the following information:

Date	Transaction	Payment	Balance
1 September 2023	Rent due	\$0.00	\$0.00
1 October 2023	Rent due	\$0.00	\$975.00
26 October 2023		\$695.00	\$280.00
1 November 2023	Rent due	\$0.00	\$1,255.00
6 November 2023		\$280.00	\$975.00
1 December 2023	Rent due	\$0.00	\$1,975.00
4 December 2023		\$975.00	\$1,000.00

Analysis

17. 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 between 1 October 2023 and 4 December 2023. This tribunal does not consider future rent.
18. The landlord submitted evidence (**Exhibit L # 1**) an attempt to deal with rental arrears. Rent was due 1 November 2023 and rental arrears owing by the tenant equaling **\$975.00** including up to 30 November 2023.

19. The rental ledger offered by the landlord is up until 4 December 2023. Rent for December 2023 can only be calculated up to and including the day of the hearing (7 December 2023). That calculation is $(\$1,000.00 \times 12 \text{ months} = \$12,000.00 \div 365 \text{ days} = \$32.88 \text{ per day} \times 7 \text{ days} = \$230.16)$. Rent for 1 December 2023 – 7 December 2023 is **$\$230.16$** .
20. 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 $\$1,000.00$. The tenant owes $\$230.16$. Current Balance of rental arrears is **$\$230.16$** .
21. Additionally, the tenant is responsible for daily rent in the amount of **$\$32.88$** beginning on 8 December 2023 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

22. The landlord's claim for a payment of the rent succeeds in the amount of **$\$230.16$** .

Issue 2: Vacant Possession of Rented Premises

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

Analysis

24. 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.*

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

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

Decision

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

Issue 3: Late Fees- \$75.00

28. The landlord offered evidence of a rental ledger prior to the hearing (**Exhibit L #5**). During the hearing, the landlord offered testimony that the tenant has carried late fees since 1 October 2023 as she was last at a zero balance on 1 September 2023.

29. 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*".

30. 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.*

31. I find that the tenant has owed late payment fees since 2 October 2023 and the landlord is entitled the maximum amount late fee of \$75.00.

Decision

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

Issue 4: Hearing Expense

33. 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.

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

Decision

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

Summary of Decision

36. The landlord is entitled to the following:

- A payment of **\$250.16**, as determined as follows:

a) Rent owing	\$230.16
b) Hearing Expense.....	\$20.00
c) Total.....	<u>\$250.16</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of **\$32.88**, beginning by 8 December 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.

12 December 2023

Date

Michael J. Reddy
Residential Tenancies Office