

Residential Tenancies Tribunal

Application 2023-1029-NL

Decision 23-1029-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 7-December-2023.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing. 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 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 their application stating that they had served the tenant with the notice of hearing via pre-paid registered mail [REDACTED] on 14-November-2023 (LL#1). Canada Post tracking indicates that the tenant did not retrieve the mail. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
5. There is a written month to month rental agreement which commenced on 1-September-2020. Rent is \$897.00 per month due on the first of each month. A security deposit of \$350.00 was paid on 5-October-2020 and is in the landlords possession.
6. The landlord amended the application to increase rent from \$503.00 as per the application to \$919.00 to include outstanding rent up to 31-December-2023, to apply the security deposit against monies owed and to seek hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$919.00
 - Late fees \$75.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$350.00

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*.
9. 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 Section 12-1 of the *Residential Tenancies Policy Manual*: Fees.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 26-October-2023, with a termination date of 7-November-2023 (LL#2).

Landlord's Position:

11. The landlord testified that rent has been in arrears since October 2023, and 4 separate payments have been made from 6-November to 4-December, however the tenant continued to carry a negative balance resulting in an amount of \$919.00.

Analysis

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

Notice where 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.

13. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 7-November-2023 the tenant was still in arrears. In accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the Act and is a valid notice.

14. I find that the tenant should have vacated the property by 7-November-2023.

Decision

15. The landlord's claim for an order for vacant possession of the rented premises succeeds.

Issue # 2: Rent paid \$919.00

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$919.00 dating back to October 2023. The landlord submitted a copy of the rental ledger to support their claim (LL#3). See below:

9/29/2023	9/2023	R-6229203		0.00	0.00	0.00	0.00	300.00	-394.00
10/1/2023	10/2023	C-6873161		897.00	0.00	0.00	897.00	0.00	503.00
11/1/2023	11/2023	C-6920638		897.00	0.00	0.00	897.00	0.00	1,400.00
11/6/2023	11/2023	R-6279420		0.00	0.00	0.00	0.00	503.00	897.00
11/20/2023	11/2023	R-6284453		0.00	0.00	0.00	0.00	400.00	497.00
11/21/2023	11/2023	R-6285340		0.00	0.00	0.00	0.00	200.00	297.00
12/1/2023	12/2023	C-6961305		897.00	0.00	0.00	897.00	0.00	1,194.00
12/4/2023	12/2023	R-6314488		0.00	0.00	0.00	0.00	275.00	919.00

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$919.00 for the period of 1-October to 31-December-2023. The landlord is seeking rent to be paid in full.

Analysis

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

Notice where failure to pay rent

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

(b) where the residential premises is

rented from month to month,

rented for a fixed term, or

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

19. Non-payment of rent is a violation of the rental agreement. The landlord's representative testified that there is outstanding rent in the amount of \$919.00 for the period of 1-October-2023 to 31-December-2023.

20. The rental ledger is amended to show a daily rate for December as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-October to 7-December in the amount of \$228.43.

Rental Ledger 2023-1029-NL			
Date	Action	Amount	Total
September 30, 2023	Balance		-\$394.00
October 1, 2023	Rent due	\$897.00	\$503.00
November 1, 2023	Rent due	\$897.00	\$1,400.00
November 6, 2023	Payment	-\$503.00	\$897.00
November 20, 2023	Payment	-\$400.00	\$497.00
November 21, 2023	Payment	-\$200.00	\$297.00
December 1-7, 2023	Rent due	\$206.43	\$503.43
December 4, 2023	Payment	-\$275.00	\$228.43

Daily rate: $\$897 \times 12 \text{ mths} = \10764
 $\$10764 / 365 \text{ days} = \29.49 per day

21. I find that the tenant is responsible for outstanding rent in the amount of \$228.43 for the period of 1-October to 7-December-2023.

22. The tenant shall pay a daily rate of \$29.49 until such time as the landlord regains possession of the property.

Decision

23. The landlord's claim for rent succeeds in the amount of \$228.43

Issue # 3: Late fees \$75.00

24. 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

25. 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.

26. The landlord's rental ledger shows that the tenant has been in arrears since 1-October-2023. I find that the maximum allowable late fee of \$75.00 as set by the Minister is a legitimate charge as stated above.

Decision

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

Issue # 4: Hearing expenses \$20.00

28. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#4).

29. As the landlord's claim has been successful, the tenant shall pay the \$20.00.

Decision

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

Issue # 5: Security deposit applied against monies owed \$350.00

Analysis

31. 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.

(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.

- (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.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

32. The landlord's claim for losses has been successful as per paragraphs 8, 12, and 15 and as such the security deposit shall be applied against monies owed.

Decision

33. The landlord's claim for security deposit to be applied against monies owed succeeds.

Summary of Decision

34. The tenant shall pay the landlord \$0.00 as follows:

Rent	\$228.43
Late fees	75.00
Hearing expenses.....	20.00
Less Partial Security deposit	<u>\$323.43</u>
 Total.....	 <u>\$0.00</u>

35. The tenant shall pay a daily rate of rent beginning 8-December-2023 of \$29.49, until such time as the landlord regains possession of the property.

36. The tenant shall vacate the property immediately.

37. The tenant shall 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.

38. The landlord will be awarded an Order of Possession.

December 14, 2023

Date

Pamela Pennell
Residential Tenancies Office