

Residential Tenancies Tribunal

Application 2023-1124-NL

Decision 23-1124-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 02-January-2024.
2. The applicant, [REDACTED], represented by [REDACTED] [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 [REDACTED] at the start of the hearing; a message was left. 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 their application stating that they had served the tenant with notice of the hearing, by email [REDACTED] on 11-December-2023, and a copy of that email was also submitted with the application (LL#01). 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. The landlord amended her claim to increase late fees to \$75.00 to show the current amount owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,275.00
 - Late Fees \$75.00
 - Other \$50.00

- Hearing expenses \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 15: Fee for failure to pay rent.

Issue 1: Rent \$1,275.00

Landlord's Position

9. The landlord submitted a rental agreement that the tenant signed with the homeowner (LL#02). In September 2023 the landlord took over management of the property on behalf of the homeowner; contract provided (LL#03).
10. The landlord reports that the tenant had moved in in May 2021. The current rental agreement was for a term from 01-July-2023 until 31-December-2023. The tenant pays \$1,275.00 on the first day of each month for rent. When the landlord began management of the rental unit the tenant signed a pre-authorized debit agreement (LL#05) for payment of rent.
11. The landlord gave the tenant notice to terminate the rental agreement in September 2023 with a termination date of 31-December-2023. The landlord indicated to the tenant that should she find another rental they would agree for the agreement to terminate earlier to accommodate the tenant. The tenant did find a new rental and moved on 30-November-2023.
12. The landlord submitted a rent ledger (LL#04). She said that prior to them managing the unit rent was paid to the homeowner. When they withdrew the rent for October there were not enough funds in the account and the ledger reflects the payment and reversal of payment for October rent. The tenant did pay the rent in full on 06-October-2023.
13. In November the landlord contacted the tenant for payment of the rent. Because the October payment had to be reversed, there was a hold on the automatic withdrawal. The tenant assured her that she would pay the rent soon. This rent was never paid. The tenant moved out the end of November. The landlord is seeking rent for the month of November as the tenant did not vacate until 30-November-2023 and she did not pay any rent that month.
14. The rent ledger (LL#04) is as follows:

Rent ledger
2023-1124-NL

Date	Action	Amount	total
1-Oct-23	Rent due	1275.00	1275.00
1-Oct-23	payment	-1275.00	0.00

5-Oct-23	reversed - manually	1275.00	1275.00
5-Oct-23	NSF charge	50.00	1325.00
6-Oct-23	payment	-1275.00	50.00
1-Nov-23	Rent due	1275.00	1325.00

15. Note NSF charge will be considered in Issue 3.

Analysis

16. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay rent for the month of November. I find that the tenant shall pay to the landlord \$1,275.00 for November 2023 rent.

Decision

17. The landlord's claim for rent succeeds in the amount of \$1,275.00.

Issue 2: Late Fees

Landlord's Position

18. The landlord is seeking late fees for rent that was not paid in November.

Analysis

19. The landlord has proven, paragraph 17, that the tenant has been in rental arrears as of 02-November-2023.

20. 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.***

21. As the tenant has been arrears since 02-November-2023, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Other \$50.00

Landlord's Position

23. The landlord's rent ledger (LL#04) shows that the tenant was late paying rent in October due to insufficient funds in her account. She explained that the pre-authorized withdrawal form (LL#05) states that:

"I/we agree to pay a Non-Sufficient (NSF) fee in the sum of \$50.00 per returned transaction/occurrence, in the event my account has Non-Sufficient funds, is closed or frozen to [REDACTED]"

She is seeking the \$50.00 charge as agreed to by the tenant.

Analysis

24. The landlord has shown that the tenant signed a pre-authorized withdrawal form (LL#05) agreeing to a fine of \$50.00 for non-sufficient funds which occurred in October. In addition to the signed form 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.

(2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

25. I find that the tenant shall pay to the landlord \$50.00 for the insufficient funds charge.

Decision

26. The landlord's claim for the bank charge of \$50.00 succeeds.

Issue 4: Hearing expenses reimbursed \$20.00

27. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

28. The tenant shall pay to the landlord \$1,420.00, as follows:

- Rent \$1,275.00
- Late fees 75.00
- Bank charges 50.00
- Hearing expenses 20.00
- Total \$1,420.00

January 10, 2024

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office