

Residential Tenancies Tribunal

Application 2023-1149-NL

Decision 2023-1149-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 3 January 2024 via teleconference.
2. The applicant, [REDACTED] represented by [REDACTED] and hereinafter referred to as “the landlord”, attended the hearing.
3. The respondents [REDACTED] and [REDACTED] hereinafter referred to as “the tenants”, did not attend the hearing. I attempted to reach the tenants by telephone prior to the hearing at 9:04 AM, but was unsuccessful.
4. The details of the claims were presented as a monthly written rental agreement started with rent set at \$1,250.00 and due on the 1st of each month (**Exhibit L # 1**) which started 1 May 2021 which has evolved into a monthly agreement. On 29 May 2023, the tenants were informed that rent would increase to \$1,300.00 effective 1 December 2023 (**Exhibit L # 2**). There was a security deposit collected on this tenancy which the landlord was still in possession, in the amount of \$937.50, which was collected on 29 April 2021.
5. The landlord issued a Landlord’s Notice to Terminate Early- Clause on 16 November 2023 under section 19 of the *Residential Tenancies Act*, 2018 requesting the tenants to be out of the rental property at [REDACTED] NL on 27 November 2023 (**Exhibit L # 3**). The tenants were served by electronic mail, on 11 December 2023 (**Exhibit L # 4**) an application for dispute resolution at [REDACTED] and at [REDACTED].
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 her application to remove vacant possession as the tenants vacated the property in December 2023; and is seeking rental arrears owing \$2,550.00, \$75.00 in late fees, \$200.00 in non-sufficient funds charges and \$20.00 hearing expense.
8. The landlord offered testimony during the hearing and did not call any witnesses.
9. The tenants were unrepresented at the hearing.

Issues before the Tribunal

10. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$2,550.00;
 - An order for late fees in the amount of \$75.00;
 - An order for non-sufficient funds of \$200.00; &
 - An order for hearing expenses of \$20.00

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- \$2,550.00

Landlord position

13. The landlord stated that there is currently written monthly rental agreement established with the tenants, have occupied the rental premises since 1 May 2021 (**Exhibit L # 1**).
14. The landlord stated that on 16 November 2023, a notice to terminate was issued to the tenants to vacate the property by 27 November 2023 (**Exhibit L # 3**).
15. The landlord provided evidence, along with her application, that tenant2 had contacted her in an attempt to rectify the rental arrears on 6 December 2023 (**Exhibit L # 5**). The landlord responded to this attempt to rectify the rental arrears on 11 December 2023 indicating that the tenants had not paid rent for November and December 2023 and the possibility for a payment plan was not an option (**Exhibit L # 5**)

16. The landlord testified to the best of her knowledge and belief, the tenants had vacated [REDACTED] on 12 December 2023.
17. Along with her application, the landlord also included a rental ledger which included rental arrears and late fees (**Exhibit L # 6**). This information and piece of evidence indicates by 1 November 2023, the tenants had incurred rental arrears in the amount of \$2,500.00. This piece of evidence presents the following information:

Date	Transaction	Due	Paid	Balance
1 Nov 2023	Rent due	\$1,250.00	\$0.00	\$2,500.00
3 Nov 2023	Payment		\$1,250.00	\$1,250.00
1 Dec 2023	Rent due	\$1,300.00	\$0.00	\$2,550.00

Analysis

18. Non-payment of rent is a violation of the rental agreement. The landlord was seeking outstanding rent for November and December 2023 (\$2,550.00).
19. The landlord testified to the best of her knowledge and belief, the tenants had exited the rental property by 12 December 2023.
20. As the landlord issued a termination notice requesting the tenants to be out by 27 November 2023, and to the best of her knowledge and belief, the tenants vacated the property on 12 December 2023, rent for December 2023 can only be calculated from the 1 December 2023 to 12 December 2023. That calculation is as follows: $\$1,300.00 \times 12 = \$15,600.00 \div 365 \text{ days} = \$42.74 \text{ per day} \times 12 \text{ days} = \textbf{\$512.88}$ owing for December.
21. I accept the landlord's claim that the tenants had not paid rent as required. The evidence offered by the landlord with her application also presents that there are rental arrears owing by the tenants. I do not accept the tenants are in rental arrears of \$2,550.00, rather **\$1,762.88** (inclusive of rental arrears for November and December 1 - 12, 2023).

Decision

22. The landlord's claim for a payment of the rent succeeds in the amount of **\$1,762.88**.

Issue # 2: Late Fees- \$75.00

23. The landlord has assessed late fees in the amount of \$75.00.

Analysis

24. 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*".

25. 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.

Decision

26. I find that the tenant has owed late payment fees in the maximum amount since March 2023 and the landlord is entitled the maximum amount late fee of **\$75.00**.

Issue # 3: Non-Sufficient Fees for Bounced Payments = \$200.00

27. The landlord has assessed non-sufficient fees for bounced payments of \$200.00. Along with her application, the landlord provided four receipts from a financial institution reflecting non-sufficient fees (**Exhibit L # 7**).

Analysis

28. Section 15 of the *Residential Tenancies Act*, 2018 offers authority of this issue. As stated within section 15(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 amount as the fee charged to the landlord by the financial institution*".
29. Also relevant with this issue is section 12-001 of the *Residential Tenancies Program Policy and Procedure Guide, Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. This policy indicates, "*Applicants should be prepared to provide evidence and argument to support the claims as respondents will also be provided an opportunity to argue against the claim*".
30. As the requirements of providing evidence were met, the landlord's claim succeeds.

Decision

31. The tenant shall pay the landlord **\$200.00** for non-sufficient funds.

Issue # 4: Hearing Expense

32. The landlord offered evidence that hearing expense included the application fee of \$20.00 (**Exhibit L # 8**) and was seeking compensation.

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

Decision

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

Summary of Decision

35. The landlord is entitled to the following:

- A payment of **\$2057.88**, as determined as follows:

a) Rent owing	\$1,762.88
b) Late Fees.....	\$75.00
c) Non-Sufficient Funds Fees.....	\$200.00
d) Hearing Expense.....	\$20.00
e) Total.....	<u>\$2,057.88</u>

13 March 2024

Date


Michael J. Reddy
Residential Tenancies Office