

Residential Tenancies Tribunal

Application 2023-1154-NL

Decision 23-1154-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 15-January-2024.
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 him 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 he 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 21-December-2023 (LL#1). Canada Post tracking indicates that the mail was retrieved on 11-January-2023. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered serviced after 5 days and as such, this is good service. 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 his absence.
5. There is a written month to month rental agreement which commenced on 1-June-2022. Rent is \$275.00 per month and is due on the first of each month. A security deposit was never paid.
6. The landlord amended the application to increase outstanding rent from \$300.00 as per the application to \$600.00 to include rent up to 31-January-2024, 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 \$600.00
 - Late fees \$75.00
 - Hearing expenses \$20.00

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 15: Fee for failure to pay rent 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 30-November-2023, with a termination date of 11-December-2023 (LL#2).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since 1-November-2023, and they are seeking vacant possession under Section 19 of the *Act*.

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, 11-December-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 11-December-2023.

Decision

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

Issue # 2: Rent paid \$600.00

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$600.00 dating back to November 2023. The landlord's representative stated that NSF charges have been applied to the account as preauthorized payments for November and December were returned from the bank. The landlord's representative submitted a copy of the rental ledger to support their claim (LL#3). See copy of rental ledger below:

11/1/2023	11/2023	C-6905992	lotrent - Lot Rent	275.00	0.00	0.00	275.00	0.00	275.00
11/1/2023	11/2023	R-6267460	chk# :ACH-1861998 - Pre-Authorized Payment NSFed by ctrl# 6279109 NSF	0.00	0.00	0.00	0.00	275.00	0.00
11/7/2023	11/2023	C-6925427	nsf - Returned check charge	25.00	0.00	0.00	25.00	0.00	25.00
11/7/2023	11/2023	R-6279109	chk# :ACH-1861998 - NSF receipt Ctrl# 6267460 NSF	0.00	0.00	0.00	0.00	-275.00	300.00
12/1/2023	12/2023	C-6946913	lotrent - Lot Rent	275.00	0.00	0.00	275.00	0.00	575.00
12/1/2023	12/2023	R-6305795	chk# :ACH-1883743 - Pre-Authorized Payment NSFed by ctrl# 6316862 NSF	0.00	0.00	0.00	0.00	275.00	300.00
12/7/2023	12/2023	C-6968707	nsf - Returned check charge	25.00	0.00	0.00	25.00	0.00	325.00
12/7/2023	12/2023	R-6316862	chk# :ACH-1883743 - NSF receipt Ctrl# 6305795 NSF	0.00	0.00	0.00	0.00	-275.00	600.00
1/1/2024	1/2024	C-6985788	lotrent - Lot Rent	275.00	0.00	0.00	275.00	0.00	875.00
1/1/2024	1/2024	R-6338575	chk# :ACH-1905027 - Pre-Authorized Payment	0.00	0.00	0.00	0.00	275.00	600.00

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$600.00 for the period of 1-November to 31-January which includes NSF fees. The landlord is seeking rent and fees 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 and fees in the amount of \$600.00 for the period of 1-November-2023 to 31-January-2024.

20. The rental ledger is amended to show a daily rate for January as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-November to 15-January in the amount of \$460.60.

Amended Rental Ledger 2023-1154NL			
Date	Action	Amount	Total
October 31, 2023	Balance		\$0.00
November 1, 2023	Rent due	\$275.00	\$275.00
November 1, 2023	Pre authorized Payment	-\$275.00	\$0.00
November 7, 2023	Payment returned - NSF	\$275.00	\$275.00
November 7, 2023	NSF fee	\$25.00	\$300.00
December 1, 2023	Rent due	\$275.00	\$575.00
December 1, 2023	Pre authorized Payment	-\$275.00	\$300.00
December 7, 2023	Payment returned - NSF	\$275.00	\$575.00
December 7, 2023	NSF fee	\$25.00	\$600.00
January 1-15, 2024	Rent due	\$135.60	\$735.60
January 1, 2024	Payment	-\$275.00	\$460.60

Daily rate: \$275.00 x 12 mths = \$3300.00
\$3300.00 / 365 days = \$9.04 per day

21. I find that the tenant is responsible for outstanding rent in the amount of \$460.60 which includes rent and NSF fees for the period of 1-November to 15-January-2024.

22. The tenant shall pay a daily rate of \$9.04 until such time as the landlord regains possession of the property.

Decision

23. The landlord's claim for rent succeeds in the amount of \$460.60.

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-November-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.

Summary of Decision

31. The tenant shall pay the landlord \$555.60 as follows:

Rent & NSF fees	\$460.60
Late fees	75.00
Hearing expenses.....	20.00

Total..... \$555.60

32. The tenant shall pay a daily rate of rent beginning 16-January-2024 of \$9.04, until such time as the landlord regains possession of the property.

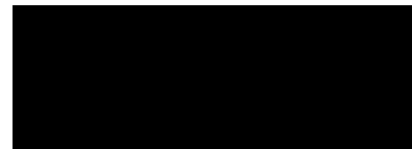
33. The tenant shall vacate the property immediately.

34. 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.

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

January 23, 2024

Date



Pamela Pennell
Residential Tenancies Office