

Residential Tenancies Tribunal

Application 2023-No.1155-NL

Decision 23-1155-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 31-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 as there was no number provided. 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 he has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail on 12-January-2024, the tracking number [REDACTED] confirms the day the mail was sent and indicates that the package was delivered on 20-January-2024. 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. The landlord amended their application to increase rent from \$290.00 to \$580.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$580.00
 - Late fees \$75.00

- Vacant possession of rental premises
- 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 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.

Issue 1: Rent \$580.00

Relevant Submissions

9. The landlord stated that they have a written monthly agreement with the tenant beginning 01-December-2019. The tenant pays \$265.00 a month for rental of land in a mobile home community. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month.
10. The landlord explained that the tenant has fallen behind in his rent, he pays by pre-authorized payments and the payments were returned for insufficient funds, bank charges have been applied to the money owed. She submitted a rent ledger (LL#02), as follows:

Rent ledger
2023-1155-NL

Date	Action	Amount	total
1-Nov-23	starting balance	0.00	0.00
1-Nov-23	rent due	265.00	265.00
1-Nov-23	Pre-authorized payment	-265.00	0.00
7-Nov-23	insufficient funds returned	265.00	265.00
7-Nov-23	bank charges	25.00	290.00
1-Dec-23	rent due	265.00	555.00
1-Dec-23	Pre-authorized payment	-265.00	290.00
7-Dec-23	insufficient funds returned	265.00	555.00
7-Dec-23	bank charges	25.00	580.00
1-Jan-24	rent due	265.00	845.00
1-Jan-24	Pre-authorized payment	-265.00	580.00

11. The landlord confirmed that the pre-authorized payment in January 2024 was successful.

Analysis

12. 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 and bank charges totaling \$580.00.
13. The landlord may charge a tenant bank charges when there are insufficient funds for a pre-authorized payment and that payment is returned, as per Section 15 of the *Residential Tenancies Act, 2018*, as follows:

Fee for failure to pay rent

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 tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

14. The tenant shall pay the landlord the rent owed totaling \$580.00.

Decision

15. The landlord's claim for rent succeeds in the amount of \$580.00.

Issue 2: Late fees \$75.00

Relevant Submissions

16. The landlord has shown, in the table in paragraph 10, that the tenant has been in rental arrears as of 02-November-2023 and is seeking the maximum allowed late fees.

Analysis

17. 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.

18. 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

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

Issue 4: Vacant Possession of the Rental Premises

Relevant Submissions

20. The landlord submitted a termination notice (LL#03). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 30-November-2023 with a termination date of 11-December-2023.
21. The landlord said that they served the notice to his email [REDACTED] on 30-November-2023 at 3:04 p.m.

Analysis

22. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which 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.

.....

23. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice. The notice was served in accordance with the *Act*.

24. The tenant should have vacated the property by 11-December-2023.

Decision

25. The landlord's claim for an order for vacant possession succeeds.

26. The tenant shall vacate the premises immediately.

27. The tenant shall pay to the landlords 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.

28. The tenant shall pay a daily rate for rent beginning 01-February-2024 of \$8.71, until such time as the landlords regain possession of the property, as follows: (\$265.00 x 12 months = \$3,180.00 per year divided by 365 days = \$8.71 a day)

Issue 5: Hearing expenses reimbursed \$20.00

29. 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

30. The tenant shall:

- Pay the landlord \$675.00 as follows:
 - Rent \$580.00
 - Late fees 75.00
 - Hearing expenses 20.00
 - Total \$675.00
- Pay a daily rate for rent beginning 01-February-2024 of \$8.71, until such time as the landlords regain possession of the property.
- Vacate the property immediately

- Pay to the landlords 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.

The landlord

- Will be awarded an Order of Possession.

February 7, 2024

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office