

Residential Tenancies Tribunal

Application 2023-1169-NL

Decision 2023-1169-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:48 PM on 4 January 2024 via teleconference.
2. The applicant, [REDACTED] represented by [REDACTED] and hereinafter referred to as “the landlord”, attended the hearing. The landlord did not call any witnesses.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, attended the hearing. [REDACTED] hereinafter referred to as “tenant2”, did not attend the hearing.
4. The details of the claims were presented as a written monthly rental agreement with rent set at \$900.00 and an agreement was in place that the tenant would pay on the 1st of each month. There was no security deposit collected on this tenancy. The tenant moved into the rental unit located at [REDACTED] NL, on 1 June 2016 and remains in the property on the date of the hearing (4 January 2024).
5. The landlord issued the tenant a Landlord’s Notice to Terminate Early-Cause under section 19 of the *Residential Tenancies Act*, 2018 on 6 December 2023 with a request for the tenant to be out of the property on 17 December 2023 (**Exhibit L # 1**). The tenant was served an application for dispute resolution (**Exhibit L #2**) via registered mail on 13 December 2023 [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 at the hearing, increasing the rental arrears owing (\$1,800.00) to include rent due for December 2023 and January 2024, late fees owing (\$75.00), along with \$20.00 hearing expenses.
8. The landlord offered testimony during the hearing and did not call any witnesses.
9. The tenant offered testimony during the hearing and did not call any witnesses.

Issues before the Tribunal

10. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$1,800.00;
 - An order for vacant possession of the rented premises;
 - An order for payment of late fees in the amount of \$75.00; &
 - 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. Also relevant and considered in this decision is section 19 of the *Act*.

Issue 1: Rent Owing- \$1,800.00

Landlord position

12. The landlord stated that there is a verbal monthly rental agreement established with the tenant, who has occupied the rental premises since June 2016. Along with her application, the landlord offered evidence of the rental agreement for the rental property at [REDACTED] NL (**Exhibit L # 3**).
13. The landlord stated there has been concerns with the tenants payment of rent when due. She testified and offered evidence that rent for October 2023 and November 2023 was not paid by the tenants and this matter resulted in a separate Application for Dispute Resolution (**Exhibit L #4**). The landlord stated she was seeking rent owing for December 2023 and January 2024.
14. The landlord testified there was a notice to terminate the tenancy was issued on 5 December 2023 (**Exhibit L # 1**). The landlord also offered a rental ledger which indicates no rental payments for December 2023 (**Exhibit L # 5**).

15. As indicated within paragraph 7 herein, the landlord had requested to include rental arrears owing to including rent payments for December 2023 and January 2024.

Tenant position

16. The tenant testified she was experiencing financial challenges due to lack of income. She stated they have not paid rent for December 2023 or for January 2024. The tenant and tenant2 remain in the rental at time of the hearing.

Analysis

17. Non-payment of rent is a violation of the rental agreement. The landlord has amended the claim at the outset to add rent to include rent up to 31 January 2024. This tribunal does not consider future rent.
18. The landlord submitted Notice under Section 19 (**Exhibit L # 1**). As such, rent was due 1 December 2023 and rental arrears owing by the tenant equaling **\$900.00** including up to 31 December 2023.
19. Rent for January 2024 can only be calculated up to and including the day of the hearing (4 January 2024). That calculation is ($\$900.00 \times 12 \text{ months} = \$10,800.00 \div 365 \text{ days} = \$29.59 \text{ per day} \times 4 \text{ days} = \118.36). Rent for 1 January 2024 – 4 January 2024 is **\$118.36**.
20. I accept the landlord's claim that the tenant has not paid rent as required. I do not accept the tenant owes rental arrears in the amount of \$1,800.00 for December 2023 and January 2024. The tenant owes \$1,018.36. Current Balance of rental arrears is **\$1,018.36**.
21. Additionally, the tenant is responsible for rent daily in the amount of **\$ 29.59** beginning on 5 January 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

22. The landlord's claim for a payment of the rent succeeds in the amount of **\$1,018.36**.

Issue 2: Vacant Possession of Rented Premises

Landlord position

23. The landlord submitted termination Notice under Section 19, notice where failure to pay rent (**Exhibit L # 1**).

Tenant position

24. The tenant testified she was experiencing financial challenges due to lack of income. She stated they have not paid rent for December 2023 or for January 2024

Analysis

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

a. Notice where failure to pay rent

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

i. (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

c. 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.

i. (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.

26. The tenant had been in rental arrears in excess of the 5 days when the notice was served on 5 December 2023 to be out of at [REDACTED] NL on 17 December 2023. The tenant testified on the day of the hearing (4 January 2024) she remains in the property following being issued the notice to vacate and she has not paid rent for December 2023 and January 2024.
27. I find the termination notice is a valid notice.

Decision

28. The landlord's claim for an order for vacant possession does succeed.

Issue 3: Late Fees- \$75.00

Landlord position

29. The landlord offered evidence of a rental ledger prior to the hearing (**Exhibit L #5**). During the hearing, the landlord offered testimony that the tenant has carried late fees prior to 1 December 2023 (**Exhibit L # 4**).
30. 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*".
31. 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.

32. I find that the tenant has owed late payment fees in the maximum amount since 1 December 2023 and the landlord is entitled the maximum amount late fee of \$75.00.

Tenant position

33. The tenant testified she was experiencing financial challenges due to lack of income. She stated they have not paid rent for December 2023 or for January 2024.

Decision

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

Issue 4: Hearing Expense- \$20.00

35. The landlord offered evidence that hearing expenses included the application fee of \$20.00 and requested to be reimbursed (**Exhibit L # 6**). As the landlord's claim succeeds, she is eligible for reimbursement of hearing expenses.

Decision

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

Summary of Decision

37. The landlord is entitled to the following:

- A payment of **\$1,113.36**, as determined as follows:
 - a) Rent owing\$1,018.36
 - b) Late fees.....\$75.00
 - c) Hearing expense.....\$20.00
 - d) Total.....**\$1,113.36**
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$29.59, beginning by 5 January 2024 and continuing to the date the landlord obtains vacant possession of the rental unit,
- The tenant shall also 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.

15 January 2024

Date


Michael J. Reddy
Residential Tenancies Office