

Residential Tenancies Tribunal

Application 2023-1173-NL

Decision 2023-1173-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:50 AM on 16 January 2024 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, attended the hearing.
4. The details of the claims were presented as a written monthly rental agreement (**Exhibit L # 1**) with rent initially set at \$1,450.00, which beginning in October 2023 increased to \$1600.00 and due on the 1st of each month. There was a security deposit paid on this tenancy in the amount of \$700.00 which was paid on 1 October 2021 and which the landlord maintains possession of on the date of the hearing. The tenant moved into the rental unit at [REDACTED] NL, on 1 August 2021 and remains in the property on the date of the hearing (16 January 2024).
5. The landlord issued a termination notice on 6 December 2023 to terminate the tenancy on 18 December 2023 under section 19 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 2**). The tenant was served in person (**Exhibit L # 3**) an application for dispute resolution on 29 December 2023 at the rental address.
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 his application at the hearing to include rental arrears owing to also include January 2024. The landlord did not wish to seek damages or utilities paid as this could not be determined until after the tenant vacated the property.
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 \$7,850.00;
 - An order for vacant possession of the rented premises;
 - An order for late fees in the amount of \$75.00;
 - Security Deposit applied against payment owed of \$700.00; and,
 - An order for hearing expenses in the amount 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. 14, 19, 34, 35, and 42 of the *Residential Tenancies Act*, 2018.

Issue 1: Rent Owing- \$7,850.00

Landlord position

13. The landlord stated that there is a written monthly rental agreement established with the tenant, who has occupied the rental premises since 1 August 2021 (**Exhibit L # 1**).
14. The landlord offered evidence that the tenant was issued a Landlord Notice to Terminate Early-Cause on 6 December 2023 requesting the tenant to be out of the rental home by 18 December 2023 (**Exhibit L # 2**).
15. The landlord stated he was seeking rental arrears which the tenant has carried forward between 1 March 2023 and 31 January 2024. The landlord testified in March 2023, the tenant's payment of rent was not consistent and by October 2023, the tenant was in rental arrears equaling \$3,450.00. The landlord stated the tenant's last payment of rent was in the amount of \$400.00 on 8 November 2023.

16. The landlord offered an Account Transaction (**Exhibit # 4**). This evidence indicates the following information:

Date	Transaction	Amount Due	Paid	Balance
Oct 1, 2023	Rent Due	\$3,450.00	\$0.00	\$3,450.00
Nov 1, 2023	Rent Due	\$5,050.00	\$0.00	\$5,050.00
Nov 8, 2023	Payment	\$5,050.00	\$400.00	\$4,650.00
Dec 1, 2023	Rent Due	\$6,250.00	\$0.00	\$6,250.00
Jan 1, 2024	Rent Due	\$7,850.00	\$0.00	\$7,850.00

Tenant Position

17. The tenant offered testimony that she “fell behind in her bills” and did not dispute any of the testimony offered by the landlord regarding rental arrears stated by the landlord. She stated, “I want to pay him back”. She testified she last paid the landlord \$400.00 on 8 November 2023.
18. The tenant confirmed she had been issued the Landlord’s Notice to Terminate Early-Cause via electronic mail on 6 December 2023 and again in person when she was served the Application for Dispute Resolution on 29 December 2023.

Analysis

19. 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 between 1 March 2023 and 31 January 2024. This tribunal does not consider future rent.
20. The landlord submitted Notice under Section 19 (**Exhibit L # 2**). As such, rent was due 1 October 2023 and rental arrears owing by the tenant equaling **\$6,250.00** including up to 31 December 2023.
21. Rent for January 2024 can only be calculated up to and including the day of the hearing (16 January 2024). That calculation is $(\$1,600.00 \times 12 \text{ months} = \$19,200.00 \div 365 \text{ days} = \$52.60 \text{ per day} \times 16 \text{ days} = \841.60 . Rent for 1 January 2024 – 16 January 2024 is **\$841.60**.
22. 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 \$7,850.00. The tenant owes \$7,091.60. Current Balance of rental arrears is **\$7,091.60**.

Decision

23. The landlord’s claim for payment of rent succeeds in the amount **\$7,091.60**.
24. Additionally, the tenant is responsible for daily rent in the amount of **\$ 52.60** beginning on 17 January 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

25. The landlord submitted termination Notice under Section 19, in relation to the tenant's failure to pay rent (**Exhibit L # 2**).

Analysis

26. 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.*

27. The tenant has owed rental arrears since 1 March 2023. The tenant had been in rental arrears in excess of 5 days when the notice was served on 6 December 2023 to be out of [REDACTED] NL on 18 December 2023. The tenant remains in the property following being issued the notice to vacate and has been charged additional rent.

28. I find the termination notice is a valid notice.

Decision

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

Issue # 3: Late Fees- \$75.00

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

Analysis

31. 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*".
32. 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

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

Issue # 4- Security Deposit

34. The landlord is seeking to retain the security deposit of \$700.00. The landlord testified that the tenant had paid a security deposit of \$700.00 on 1 October 2021 and this testimony was not disputed by the tenant. As the landlord's claim for rent has succeeded, he shall retain that deposit in this decision and attached order.

Decision

35. The landlord's claim for retention on the security deposit succeeds.

Issue 5: Hearing Expense

36. The landlord offered evidence of the application fee (**Exhibit L # 5**) and was seeking compensation.

Decision

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

Summary of Decision

38. The landlord is entitled to the following:

- A payment of **\$6, 486.60**, as determined as follows:
 - a) Rent owing\$7,091.60
 - b) Late Fees.....\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) Less: Security Deposit.....\$700.00
 - e) Total.....**\$6,486.60**
- An order for vacant possession of the rented premises;
- A payment of a daily rate of rent in the amount of **\$52.60**, beginning 17 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.

9 February 2024

Date


Michael J. Reddy
Residential Tenancies Office