

Residential Tenancies Tribunal

Application 2023-1176-NL

Decision 2023-1176-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 16 January 2024 via teleconference.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, initially did not attend the hearing. 15 minutes of grace of extended. At approximately 9:21 AM, the tenant entered the hearing and attended.
4. The details of the claims were presented as a written monthly rental agreement (**Exhibit L # 1**) with rent set at \$720.00 and due on the 1st of each month. There was a security deposit requested on this tenancy in the amount of \$400.00 which remains unpaid on the date of the hearing. The tenant moved into the rental unit located at [REDACTED] NL, on 1 September 2023 and remains in the property on the date of the hearing.
5. The landlord issued a termination notice on 21 November 2023 to terminate the tenancy on 2 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 21 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 her application at the hearing to include rental arrears owing to also include January 2024.
8. The landlord offered testimony during the hearing and did not call any witnesses.
9. The tenant offered testimony during the hearing and called a witness, [REDACTED]

Issues before the Tribunal

10. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$4,000.00;
 - An order for late fees in the amount of \$75.00;
 - An order for vacant possession of the rented premises; 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 and Late Fees - \$4,075.00

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 September 2023 (**Exhibit L # 1**).
14. The landlord offered evidence that the tenant was issued a Landlord Notice to Terminate Early-Cause on 21 November 2023 (**Exhibit L # 2**).
15. The landlord stated she was seeking rental arrears between 1 September 2023 and 31 January 2024. The landlord stated this amount includes the previously requested security deposit in the amount of \$400.00 that the tenant never paid since taking occupancy of the rental, as well as \$75.00 late fees.

16. The landlord offered testimony the tenant has not held a zero balance since taking occupancy of the rental on 1 September 2023. The landlord offered an Account Transaction (**Exhibit # 4**). This evidence indicates the following information:

Date	Transaction	Amount Due	Paid	Balance
1 Sept 2023	Security Deposit	\$400.00	\$0.00	\$400.00
1 Sept 2023	Rent Due	\$720.00	\$0.00	\$1,120.00
1 Oct 2023	Rent Due	\$720.00	\$0.00	\$1,840.00
1 Nov 2023	Rent Due	\$720.00	\$0.00	\$2,560.00
1 Dec 2023	Rent Due	\$720.00	\$0.00	\$3,380.00
1 Dec 2023	Late Fees	\$75.00	\$0.00	\$3,355.00

Tenant Position

17. The tenant offered testimony that he has not paid rent as required since taking occupancy on 1 September 2023. He stated he has not paid the security deposit to this point of his occupancy.
18. The witness for the tenant stated the tenant was having a challenging time of late as a result of his mother being ill and recently passing away.

Analysis

19. Non-payment of rent is a violation of the rental agreement. The landlord has amended the claim at the outset to include rent up to 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 September 2023 and rental arrears owing by the tenant equaling **\$2,980.00** 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 $(\$720.00 \times 12 \text{ months} = \$8,640.00 \div 365 \text{ days} = \$23.67 \text{ per day} \times 16 \text{ days} = \$378.72)$. Rent for 1 January 2024 – 16 January 2024 is **\$378.72**.
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 \$4,075.00. The tenant owes \$3,358.72. Current Balance of rental arrears is **\$3,358.72**.
23. The landlord is also seeking \$75.00 for late fees. 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*".

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

26. The landlord is seeking \$400.00 owing for the security deposit to be included in with rental arrears. The *Residential Tenancies Act*, 2018, defines security deposit as:

Definitions

2. In this Act (I) “security deposit” means money or other value paid, or required to be paid under a rental agreement, by a tenant to a landlord to be held as security for:

(i) the performance of an obligation, or

(ii) a liability of the tenant

27. The Act also offers further clarification around security deposits. As defined in section 14 (8), “A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section”. Based on the definition and further insight that the security deposit is not an asset of the landlord, \$400.00 will not be included in the rental arrears owing by the tenant.

28. Rental arrears owing to the landlord equals \$3,433.72 is broken down as follows:

- Rent between 1 September and 31 December 2023.....\$2,980.00
- Rent between 1 January and 16 January 2024.....\$378.72
- Late Fees.....\$75.00
- Total.....\$3,433.72

29. Additionally, the tenant is responsible for daily rent in the amount of **\$ 23.67** beginning on 17 January 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

30. The landlord's claim for a payment of the rent succeeds in the amount of **\$3,433.72**.

Issue 2: Vacant Possession of Rented Premises

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

Analysis

32. 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.

33. The tenant had been in rental arrears in excess of 5 days when the notice was served on 21 November 2023 to be out of [REDACTED] NL on 2 December 2023. The tenant remains in the property following being issued the notice to vacate and has been charged additional rent.
34. I find the termination notice is a valid notice.

Decision

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

Issue 3: Hearing Expense

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

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

Decision

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

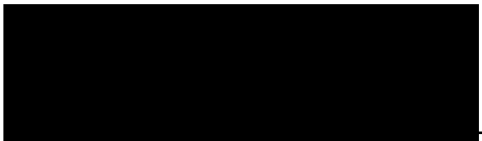
Summary of Decision

39. The landlord is entitled to the following:

- A payment of **\$3,453.72**, as determined as follows:
 - a) Rent and late fees owing \$3,433.72
 - b) Hearing Expenses..... \$20.00
 - c) Total..... **\$3,453.72**
- An order for vacant possession of the rented premises.
- A payment of a daily rate of rent in the amount of **\$23.67**, 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.

22 January 2024

Date


Michael J. Reddy
Residential Tenancies Office