

Residential Tenancies Tribunal

Application 2023-1198-NL

Decision 23-1198-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:50 p.m. on 18-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference. The applicant, [REDACTED] hereinafter referred to as "the landlord" did not attend.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "the tenants" attended by teleconference.

Preliminary Matters

4. The landlords submitted an affidavit with their application stating that they had served the tenants with the notice of hearing electronically through email on 20-December-2023 (LL#1). Both respondents confirmed receiving the documents on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written fixed rental agreement which commenced on 6-October-2023. Rent is \$1400.00 per month due on the first of each month. A security deposit of \$900.00 was paid on 6-October-2023 and is in the landlord's possession.
6. The landlord amended the application to increase rent from \$3340.00 as per the application to \$4740.00 to include outstanding rent up to 31-January-2024, to apply the security deposit against monies owed and to seek hearing expenses.

Issues before the Tribunal

7. The landlords are seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$4740.00
 - Late fees \$185.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$900.00

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 14: Security deposit 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 landlords submitted a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 4-December-2023, with a termination date of 18-December-2023 (LL#2).

Landlord's Position:

11. The landlord testified that rent is outstanding in the amount of \$4740.00 for the period of 1-October-2023 to 31-January-2024.

Tenant's Position

12. The tenants did not dispute that rent is outstanding in the amount of \$4740.00.

Analysis

13. 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.

14. The tenants were in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 18-December-2023 the tenants were 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.

15. I find that the tenants should have vacated the property by 18-December-2023.

Decision

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

Issue # 2: Rent paid \$4740.00

Relevant Submission

17. The landlord testified that rent is outstanding in the amount of \$4740.00 for the period of 1-October-2023 to 31-January-2024. The landlord submitted a copy of the rental ledger to support their claim (LL#3). See breakdown of ledger below:

Rental Ledger 2023-1198NL			
Date	Action	Amount	Total
September 30, 2023	Balance	\$0.00	\$0.00
October 1, 2023	Rent due	\$1,100.00	\$1,100.00
October 6, 2023	Payment	-\$100.00	\$1,000.00
November 1, 2023	Rent due	\$1,400.00	\$2,400.00
November 24, 2023	Payment	-\$460.00	\$1,940.00
December 1, 2023	Rent due	\$1,400.00	\$3,340.00
January 1, 2024	Rent due	\$1,400.00	\$4,740.00

Landlord's Position

18. The landlord testified that rent is outstanding in the amount of \$4740.00 for the period of 1-October to 31-January-2024. The landlord is seeking rent to be paid in full.

Tenant's Position

19. The tenants agreed that rent is outstanding in the amount of \$4740.00 and gave several reasons as to why they were unable to pay their rent.

Analysis

20. 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*

21. Non-payment of rent is a violation of the rental agreement. The landlord testified that there is outstanding rent in the amount of \$4740.00 for the period of 1-October-2023 to 31-January-2024.

22. The rental ledger is amended to show a daily rate for January as this tribunal does not consider future rent (see below):

Amended Rental Ledger 2023-1198NL			
Date	Action	Amount	Total
September 30, 2023	Balance	\$0.00	\$0.00
October 1, 2023	Rent due	\$1,100.00	\$1,100.00
October 6, 2023	Payment	-\$100.00	\$1,000.00
November 1, 2023	Rent due	\$1,400.00	\$2,400.00
November 24, 2023	Payment	-\$460.00	\$1,940.00
December 1, 2023	Rent due	\$1,400.00	\$3,340.00
January 1-18, 2023	Rent due	\$828.54	\$4,168.54

Daily rate: \$1400 x 12 mths = \$16800
\$16800 / 365 days = \$46.03 per day

23. I find that the tenants are responsible for outstanding rent in the amount of \$4168.54 for the period of 1-October to 18-January-2024.

24. The tenants shall pay a daily rate of \$46.03 until such time as the landlords regain possession of the property.

Decision

25. The landlord's claim for rent succeeds in the amount of \$4168.54.

Issue # 3: Late fees \$185.00

26. 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

27. 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.

28. The landlord's rental ledger shows that the tenant has been in arrears since 1-October-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

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

Issue # 4: Hearing expenses \$20.00

30. The landlords paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#4).

31. As the landlord's claim has been successful, the tenants shall pay the \$20.00.

Decision

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

Issue # 5: Security deposit applied against monies owed \$900.00

Analysis

33. Section 14 of the *Residential Tenancies Act, 2018* states:

Security deposit

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.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

- (10) Where a landlord believes he or she has a claim for all or part of the security deposit,
 - (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
 - (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

34. The landlord's claim for losses has been successful as per paragraphs 25 and 32, and as such the security deposit shall be applied against monies owed.

Decision

35. As vacant possession has been dealt with and the tenants shall vacate the premises, the security deposit will be applied against any monies owed.

Summary of Decision

36. The tenants shall pay the landlords \$3363.54 as follows:

Rent	\$4168.54
Late fees	75.00
Hearing expenses.....	20.00
Less security deposit.....	<u>\$900.00</u>
 Total.....	 <u>\$3363.54</u>

37. The tenants shall pay a daily rate of rent beginning 19-January-2024 of \$46.03, until such time as the landlords regain possession of the property.

38. The tenants shall vacate the property immediately.

39. The tenants shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

40. The landlords will be awarded an Order of Possession.

January 31, 2024

Date



Pamela Pennell
Residential Tenancies Office