

Residential Tenancies Tribunal

Application 2023-1210-NL

Decision 23-1210-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 23 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", did not attend the hearing (*Absent and Not Represented*).
4. The details of the claims were presented as a written monthly rental agreement with rent set at \$902.00 and due on the 1st of each month. There was a security deposit set in the amount of \$432.50, and the tenant has resided at [REDACTED] NL since 1 November 2021. On the date of hearing, the tenant remained in the unit. The landlord issued the tenant a letter in regards to outstanding rental arrears owing and the expectation that rent be paid on the 1st of each month, along with a notice to terminate under section 19 of the *Residential Tenancies Act, 2018* on 20 December 2023. The section 19 notice requested the tenant to be out of the rental by 1 January 2024 (**Exhibit L # 1**). The tenant was served an application for dispute resolution by registered mail on 5 January 2024 (**Exhibit # 2**).
5. 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

6. The landlord did not amend her application at the hearing and was seeking outstanding in rental arrears is **\$44.00** up to and including 31 December 2023.

7. The tenant was not present or represented at the hearing. This tribunal's policies concerning notice requirements and hearing attendance has been adopted from the Rules of the Supreme Court, 1986.
 - a. Rule 29.05(2)(a) states, *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, 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/she has been properly served.*
8. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing **5 January 2024** by registered mail (**Exhibit L # 2**). In addition, the landlord submitted the tracking history for [REDACTED] showing that a notice card was left for the tenant, indicating that the notice was available for pick-up at the Post Office on **9 January 2024** but was never collected (**Exhibit L # 3**). The landlord offered testimony during the hearing that the registered mail had since been returned to sender.
9. Section 42(6) of the *Residential Tenancies Act, 2018* states:

Application to director

(6) For the purpose of this section, where a copy of the application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the copy of the application was prepaid and properly addressed and sent.

10. Prior to the start of the hearing, a telephone call was placed to a telephone call was placed to the tenant to a number provided by the landlord [REDACTED] at 9:05 AM. This number was no longer in service.
11. As the tenant was properly served with the application for dispute resolution, an attempt to contact the tenant was made on the date of the hearing (23 January 24), and as any further delay in these proceedings could unfairly disadvantage the landlord application, I proceeded in the tenant's absence.

Issues before the Tribunal

12. The landlord is seeking the following:
 - An order for payment of rent in the amount of **\$44.00**;
 - Late Fees in the amount of **\$75.00**;
 - An order for vacant possession of the rented premises; and,
 - Hearing Fee in the amount of **\$20.00**.

Legislation and Policy

13. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*
14. Also relevant and considered in this case is sections, 19, 34, 35 and 42 of the *Residential Tenancies Act, 2018*. Also, section 12-1 of the *Residential Tenancies Program Policy Manual*.

Issue 1: Rent Owing- \$44.00

15. The landlord stated that there is a written monthly rental agreement established with the tenant and that the tenant has occupied the rental premises since November 2021. She testified there had been a rental increase from \$880.00 to \$902.00 effective 1 November 2023.
16. The landlord offered testimony that rent is outstanding in the amount of \$44.00; the tenant has carried forward in rental arrears since 1 November 2023 and last had a zero balance on 1 October 2023. The landlord stated with the rental increase in November, the tenant has not paid the \$22.00 extra per month. The landlord offered evidence of a rental ledger related to the tenant (**Exhibit L # 4**).
17. The ledger presented by the landlord contained the following information:

Date	Transaction	Charges	Payment	Balance
29 Sept 2023	Oct Subsidy	\$880.00	\$880.00	-\$880.00
1 Oct 2023	Rent Due	\$880.00	\$0.00	\$0.00
31 Oct 2023	Nov Subsidy	\$724.00	\$724.00	-\$724.00
1 Nov 2023	Rent Due	\$902.00	\$156.00	\$22.00
30 Nov 2023	Dec Subsidy		\$724.00	-\$702.00
1 Dec 2023	Rent Due	\$902.00		\$200.00
1 Dec 2023	Payment		\$156.00	\$44.00

Analysis

18. The landlord provided evidence of a letter dated 20 December 2023 for the tenant, indicating the expectations that rent was due on the first of each month and that he held an outstanding balance of \$44.00 (**Exhibit L # 1**).
19. The landlord was seeking rental arrears up to 31 December 2023.
20. I accept the landlord's claim that the tenant has not paid the full amount of rent owed. I also accept testimony and evidence that the tenant carried forward rental arrears in the amount of \$44.00 for the period ending 31 December 2023.
21. Non-payment of rent is a violation of the rental agreement. While the landlord did not amend her application to include rent for January 2024 to the date of the hearing, it is noted that the tenants remain responsible for the payment of rent during the time that they maintain the use or occupancy of the residential premises.

Decision

22. The tenant shall pay the full amount of rental arrears owing in the amount of **\$44.00**.

Issue 2: Late Fees- \$75.00

23. The landlord offered evidence of a rental ledger prior to the hearing (**Exhibit L #3**). During the hearing, the landlord offered testimony that the tenant has carried late fees since November 2023 as he was last at a zero balance on 1 October 2023.

24. 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*”.

25. 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.*

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

Decision

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

Issue 3: Vacant Possession of Rented Premises

28. The landlord submitted a copy of the termination notice, issued to the tenant, under section 19 of the *Residential Tenancies Act*, 2018, with an effective termination date of 1 January 2024 (**Exhibit L # 1**).

29. The landlord stated the tenant has not vacated the rented premises as of the date of this hearing, and she is seeking an order for vacant possession.

Analysis

30. 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.*

- 31. According to the landlord's rental records, the tenant has carried forward \$22.00 of rental arrears for November 2023 and \$22.00 of rental arrears for December 2023.
- 32. As the tenant has not paid the rental arrears prior to being issued termination date on 20 December 2023 and as the notice meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.

Decision

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

Issue 4: Hearing Expenses- \$20.00

- 35. The landlord paid an application fee of \$20.00 (**Exhibit L # 5**).

Analysis

- 36. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. While the landlord's claim is successful, the amount

awarded is less than the stated security deposit. The application fee of \$20.00 will not be awarded.

Decision

37. As the landlord's claim for hearing expenses fails.

Summary of Decision

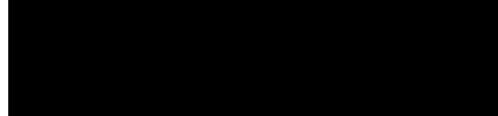
38. The landlord is entitled to the following:

- A payment of **\$119.00**, as determined as follows:

a) Rent owing	\$44.00
b) Late Fees.....	\$75.00
c) Total.....	<u>\$119.00</u>
- An order for vacant possession of the rented premises,
- 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.

7 February 2024

Date



Michael J. Reddy
Residential Tenancies Office