

Residential Tenancies Tribunal

Application 2024-0014-NL

Decision 2024-0014-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 29 January 2024 via teleconference.
2. The applicant, [REDACTED] represented by [REDACTED] and hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, did not attend the hearing and was not represented.
4. The details of the claims were presented as a written monthly rental agreement with rent set at \$878.00 and due on the 1st of each month. There was a security deposit collected on this tenancy on 22 June 2022, still in possession of the landlord, in the amount of \$1017.00. The tenant moved into the rental unit located at [REDACTED] [REDACTED] NL, on 1 July 2022 and remains in the property on the date of the hearing (29 January 2024).
5. The landlord issued the tenant a letter dated 3 January 2024 indicating concerns with rental arrears in the amount of \$707.65 (**Exhibit L # 1**). The landlord issued the tenant a Landlord’s Notice to Terminate Early- Cause by placing it under the door of the rental unit on 3 January 2024 with a request for the tenant to exit the property by 14 January 2024 (**Exhibit L # 2**). The tenant was served by registered mail (**Exhibit L # 3**) an application for dispute resolution on 9 January 2024 [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 to include hearing expenses.
8. The landlord offered testimony during the hearing and did not call any witnesses.
9. The tenant was not present or represented at this hearing and I was unable to reach him by telephone as there was no contact information available to me and the applicant did not have a contact telephone number for the respondent. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date 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 has been properly served. The landlord submitted an affidavit with her application stating the tenant was served, by registered mail [REDACTED] on 9 January 2024. The Canada Post Tracking information indicates notices were left for the tenant on both 10 January 2024 and again on 15 January 2024. As the tenant was properly served, and as further delay in the proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

10. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$707.65
 - An order for vacant possession of the rented premises
 - Late fees in the amount of \$75.00; &
 - An order for hearing expenses

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. 19, 34, 35, and 42 of the *Residential Tenancies Act, 2018*, and rule 29 of the *Rules of the Supreme Court, 1986*.

Issue 1: Rent Owed- \$707.65

Relevant Submissions

13. The landlord stated that there is a written monthly rental agreement established with the tenant, who has occupied the rental premises since 1 July 2022.

14. The landlord offered evidence that attempts were made to rectify the rental arrears as prior notice was sent to the tenant to deal with the rental arrears (**Exhibit L # 1**).
15. The landlord stated the tenant was carrying a rental credit in the amount of \$378.35 on 31 October 2023. Since that time, the tenant has made two payments in the amount of \$338.00 on 1 December 2023 and 2 January 2024 which has resulted in rental arrears accumulating.
16. The landlord offered a Rental Ledger (**Exhibit # 4**). This evidence indicates the following information:

Date	Transaction	Payment	Balance
1 Nov 2023	Rent due-\$878.00	\$872.00	Credit \$372.35
1 Dec 2023	Rent due- \$878.00	\$338.00	\$167.65
1 Jan 2024	Rent due-\$878.00	\$0.00	\$1,045.65
2 Jan 2024		\$338.00	\$707.65

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 rental arrears between 1 November 2023 and 31 January 2024. This Tribunal does not consider future rent.
18. The landlord submitted evidence (**Exhibit L # 1**) of an attempt to deal with rental arrears sent to the tenant on 3 January 2024. Rental arrears owing by the tenant equaling **\$167.65** including up to 31 December 2023.
19. When I review the rental ledger offered by the landlord is up until 2 January 2024. I see a number of situations when the tenant held a rent credit and the rental arrears outstanding begin in December 2023 and including January 2024. Rent for January 2024 can only be calculated up to and including the day of the hearing (29 January 2024). That calculation is $(\$878.00 \times 12 \text{ months} = \$10,536.00 \div 365 \text{ days} = \$28.87 \text{ per day} \times 29 \text{ days} = \$837.23)$. Rent for 1 January 2024 – 29 January 2024 is \$837.23 – rent paid on 2 January 2024 in the amount of \$338.00.
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 \$707.65. The calculation to determine the rental arrears is \$167.65 (December Rental Arrears) + \$837.23(January rent owing) - \$338.00 (Rent amount paid on 2 January 2024) = \$666.88. Current Balance of rental arrears is **\$666.88**.
21. Additionally, the tenant is responsible for daily rent in the amount of **\$ 28.87** beginning on 30 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 **\$666.88**.

Issue 2: Vacant Possession of Rented Premises

23. The landlord submitted termination Notice under Section 19, notice where failure to pay rent (**Exhibit L # 2**).

Analysis

24. 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.

25. The tenant had been in rental arrears in excess of the 5 days when the notice was served on 3 January 2024 to be out of [REDACTED] NL on 14 January 2024. The landlord stated this notice was placed under the door of the rental unit on 3 January 2024. The tenant remains in the property following being issued the notice to vacate and has been charged additional rent. The termination notice is a valid notice.

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

Decision

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

Issue 3: Late Fees- \$75.00

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

31. 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.

Decision

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

Issue 4: Hearing Expense

33. The landlord offered evidence that hearing expense included the application fee of \$20.00 and requested the cost of registered mail be included in with the hearing expenses. That said, while the receipt for the \$20.00 application for hearing was entered into evidence (**Exhibit L # 6**), there was no evidence related to the registered mail fee.
34. I find the landlord's claim for hearing expense fee succeeds in the amount of \$20.00.

Decision

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

Summary of Decision

36. The landlord is entitled to the following:

- A payment of **\$761.88**, as determined as follows:
 - a) Rent owing\$666.88
 - b) Late Fees.....\$75.00
 - c) Hearing Expense.....\$20.00
 - d) Total.....**\$761.88**
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of **\$28.87**, beginning by 30 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.

31 January 2024

Date

Michael J. Reddy
Residential Tenancies Office