

## Residential Tenancies Tribunal

Application 2024-0017-NL

Decision 2024-0017-NL

Michael Reddy  
Adjudicator

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### Introduction

1. The hearing was called at 9:05 AM on 30 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 \$851.00 and due on the 1<sup>st</sup> of each month. There was a security deposit on this tenancy in the amount of \$600.00 collected on 14 October 2020 and still in possession by the landlord. The tenant has resided at [REDACTED] NL since 1 October 2020. On the date of hearing, the tenant remained in the unit. The landlord issued the tenant a letter regarding the outstanding rental arrears owing and the expectation that rent be paid on the 1<sup>st</sup> of each month (**Exhibit L # 1**), along with a notice to terminate under section 19 of the *Residential Tenancies Act*, 2018 on 3 January 2024 with a request for the tenant to be out of the rental by 14 January 2024 (**Exhibit L # 2**). The tenant was served by registered mail on 9 January 2024, an application for dispute resolution related to rental arrears outstanding and late fees (**Exhibit # 3**).
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 amend her application at the hearing and was seeking outstanding in rental arrears is **\$83.62** up to and including 30 January 2024.

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 **9 January 2024** by registered mail (**Exhibit L # 2**). In addition, the landlord submitted copies of the tracking histories with her application. The tracking history [REDACTED] shows that the registered mail was delivered on **11 January 2024 (Exhibit L # 4)**.
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 9:04 AM. A male answered the telephone call and when I introduced myself, the male stated, "Why are you calling me so early". The tenant was asked if he wished to participate in the hearing to which he responded, "No" and terminated the telephone call.
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 (30 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 **\$83.62**;
  - An order for vacant possession of the rented premises;
  - Late Fees in the amount of **\$75.00**; &
  - 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* and Rule 29 of the *Rules of the Supreme Court, 1986*.

## Issue 1: Rent Owing- \$83.62

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 1 October 2020. She testified there had been a rental increase from \$830.00 to \$851.00 effective 1 September 2023.
16. The landlord offered testimony that rent is outstanding in the amount of \$83.62, the tenant has carried forward in rental arrears since 1 October 2023 and last had a zero balance on 1 September 2023. The landlord offered evidence of a rental ledger related to the tenant (**Exhibit L # 5**).
17. The ledger presented by the landlord suggests the following information:

Date	Transaction	Charges	Payment	Balance
1 Nov. 2023	Rent Due	\$851.00	\$455.00	\$80.00
30 Nov. 2023	Payment		\$356.00	-\$255.00
1 Dec. 2023	Rent Due	\$851.00	\$474.00	\$101.00
29 Dec. 2023	Payment		\$356.00	-\$255.00
1 Jan. 2024	Rent Due	\$851.00	\$474.00	\$122.00
15 Jan. 2024	Payment		\$38.38	\$83.62

## Analysis

18. The landlord provided evidence of a letter dated 3 January 2024 for the tenant, indicating the expectations that rent was due on the first of each month and that he held an outstanding balance, at that time, of \$122.00 (**Exhibit L # 1**).
19. The landlord was seeking rental arrears outstanding up to 30 January 2024.
20. I accept the landlord's claim that the tenant has paid rent. I also accept testimony and evidence that the tenant carried forward rental arrears in the amount of \$83.62 on the date of the hearing (30 January 2024), remains outstanding.

## Decision

21. The tenant shall pay rental arrears in the amount of **\$83.62**.

## Issue 2: Vacant Possession of Rented Premises

22. The landlord submitted a copy of a termination notice which served to the tenant by an employee of [REDACTED] (Exhibit L # 2).
23. This termination notice was issued under section 19 of the *Residential Tenancies Act*, 2018 and it has an effective termination date of 14 January 2024.
24. The landlord stated the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

### Analysis

25. 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.***
26. The tenant was in rental arrears in excess of the 5 days when the notice of hearing was served on 3 January 2024 to move out of [REDACTED] NL by 14 January 2024. The tenant remains in the property at the time of the hearing (30 January 2024).

27. According to the landlord's rent records, the tenant has carried forward \$40.00 of rental arrears for October 2023, \$80.00 for November 2023, \$101.00 for December 2023 and \$83.62 up to and including 30 January 2024.
28. As the tenant has not paid off the arrears prior to being issued termination date on 3 January 2024 and as the notice meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.
29. I find the termination notice is a valid notice.

#### **Decision**

30. The landlord's claim for an order for vacant possession does succeed.
31. The tenant shall 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.

#### **Issue 3: Late Fees- \$75.00**

32. 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 October 2023 as he was last at a zero balance on 1 September 2023.
33. 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*".
34. 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.*
35. I find that the tenant has owed late payment fees in the maximum amount since October 2023 and the landlord is entitled the maximum amount late fee of \$75.00.

#### **Decision**

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

**Issue 4: Hearing Expenses- \$20.00**

37. The landlord paid an application fee of \$20.00 (**Exhibit L # 6**).

**Decision**

38. As the landlord's claim has been successful, the tenant shall pay her hearing expense of **\$20.00** for the costs of filing this application.

**Summary of Decision**

39. The landlord is entitled to the following:

- A payment of **\$178.62**, as determined as follows:

a) Rent owing .....	\$83.62
b) Late Fees.....	\$75.00
c) Hearing Expense.....	\$20.00
d) Total.....	<b><u>\$178.62</u></b>
- 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

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Date

Michael J. Reddy  
Residential Tenancies Office