

Residential Tenancies Tribunal

Application 2024-0081-NL

Decision 2024-0081-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 21 February 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, nor was the tenant represented. Fifteen minutes of grace of was extended. I was unable to reach the tenant by telephone prior to the start of the hearing. I attempted to reach the tenant at 9:04 AM at a telephone number [REDACTED] however an unidentified male suggested it was, “the wrong number”. The landlord claimed at the time of the hearing, the respondent had been sent the Application for Dispute Resolution by electronic mail and also by registered mail. She states she was not seeking reimbursement for registered mailing fees at the hearing. 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 via electronic mail on 8 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 his absence.
4. The details of the claims were presented as a written monthly rental agreement (**Exhibit L # 1**) with rent set at \$985.00, heat and lights included, and due on the 1st of each month. There was a security deposit collected on this tenancy in the amount of \$455.00 on 22 December 2021 which remains still in the possession of the landlord. The tenant moved into the rental unit located at [REDACTED] on 17 December 2021 and remains in the property on the date of the hearing (21 February 2024).

5. The landlord issued a termination notice on 8 January 2024 to terminate the tenancy on 24 January 2024 under section 19 of the *Residential Tenancies Act, 2018* (**Exhibit L # 2**). The tenant was served electronically (**Exhibit L # 3**) an application for dispute resolution on 8 January 2024 at [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 rental arrears owing to also include February 2024 and increased late fees owing.
8. The landlord offered testimony during the hearing and did not call any witnesses.

Issues before the Tribunal

9. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$1,060.00;
 - An order for vacant possession of the rented premises;
 - An order for late fees in the amount of \$75.00; and
 - An order for hearing expenses in the amount of \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*
11. Also relevant and considered in this case is S. 14, 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- \$985.00

12. The landlord stated that there is a written monthly rental agreement established with the tenant, who has occupied the rental premises since 17 December 2021 (**Exhibit L # 1**).
13. The landlord offered evidence that the tenant was issued a Landlord Notice to Terminate Early-Cause on 8 January 2024 (**Exhibit L # 2**).
14. The landlord stated she was seeking rental arrears between 1 January 2024 and 29 February 2024. The landlord stated in January 2024, there was a rental increase of

\$50.00 equaling \$985.00, of which the tenant was previously informed (**Exhibit L # 4**), and since this increase described the tenant's payment of rent as, "sporadic".

15. The landlord offered testimony the tenant had held a zero balance on 5 December 2023. The landlord offered a Rent Ledger (**Exhibit # 5**). This evidence indicates the following information:

Date	Transaction	Amount Due	Paid	Balance
1 Dec 2023	Rent due	\$935.00	\$0.00	\$935.00
5 Dec 2023	Payment		\$935.00	\$0.00
1 Jan 2024	Rent due	\$985.00	\$0.00	\$985.00
1 Feb 2024	Rent due	\$985.00	\$0.00	\$1,970.00
1 Feb 2024	Payment		\$985.00	\$985.00

Analysis

16. 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 rent between 1 January 2024 and 29 February 2024. This tribunal does not consider future rent.
17. The landlord submitted Notice under Section 19 (**Exhibit L # 2**). As such, rent was due 1 January 2024 and rental arrears owing by the tenant equaling **\$985.00** including up to 31 January 2024.
18. Rent for February 2024 can only be calculated up to and including the day of the hearing (21 February 2024). That calculation is ($\$985.00 \times 12 \text{ months} = \$11,784.00 \div 366 \text{ days} = \$32.20 \text{ per day} \times 21 \text{ days} = \676.20). Rent for 1 February 2024 – 21 February 2024 is **\$676.20**.
19. I accept the landlord's claim that the tenant has not paid rent as required. Current Balance of rental arrears is **\$1,661.20**.

Decision

20. The landlord's claim for rental arrears succeeds in the amount of **\$1,661.20**.
21. Additionally, the tenant is responsible for daily rent in the amount of **\$32.20** beginning on 22 February 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

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

Analysis

23. 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.

24. The tenant had been in rental arrears in excess of 5 days when the notice was served on 8 January 2024 to be out of [REDACTED] NL, by 24 January 2024. The tenant remains in the property following being issued the notice to vacate and has been charged additional rent.

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

Decision

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

Issue 3: Late Fees- \$75.00

27. 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”.

28. 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.

29. I find that the tenant has owed late payment fees since 2 January 2024, and the landlord is entitled to the maximum amount of late fees equaling **\$75.00**.

Decision

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

Issue 4: Hearing Expense

31. The landlord offered evidence of the application fee (**Exhibit L # 6**) and was seeking compensation.
32. As the landlord’s application is successful, I find the claim for hearing expenses succeeds.

Decision

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

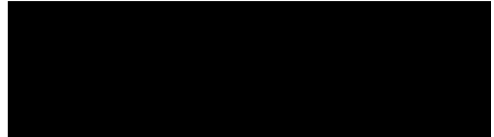
Summary of Decision

34. The landlord is entitled to the following:
- A payment of **\$1,756.20**, determined as follows:
 - a) Rent owing\$1,661.20
 - b) Late Fees..... \$75.00
 - c) Hearing Expenses..... \$20.00
 - An order for vacant possession of the rented premises,

- A payment of a daily rate of rent in the amount of **\$32.20**, beginning 22 February 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.

21 February 2024

Date



Michael J. Reddy
Residential Tenancies Office