

Residential Tenancies Tribunal

Application 2024-0107-NL

Decision 24-0107-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:45 PM on 6 March 2024 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, attended the hearing.
4. The details of the claims were presented as a written monthly rental agreement (**Exhibit L # 1**) with rent set at \$1,000.00, pay own utilities, and due on the 1st of each month. There was a security deposit set in the amount of \$750.00 collected in full on 18 December 2021, and the tenant has resided at [REDACTED] NL, [REDACTED] since 1 January 2022. On the date of hearing, the tenant remained in the unit. The landlord issued the tenant a notice to terminate under section 19 of the *Residential Tenancies Act*, 2018 on 28 January 2024 with a request for the tenant to be out of the rental by 9 February 2024 (**Exhibit L # 2**). The tenant was served an application for dispute resolution by e-mail [REDACTED] on 14 February 2024 at approximately 3:32 PM (**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 amended his application at the hearing and was seeking outstanding rental arrears in the amount of **\$3,000.00** beginning in January 2024 up to and including 31 March 2024. He is also amended his application seeking **\$75.00** in late fees.
7. The landlord offered testimony during the hearing and did not call any witnesses.

8. The tenant 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 **\$3000.00**;
 - 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

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 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- \$3000.00

Landlords Position

12. The landlord testified the tenant moved into [REDACTED] NL in January 2022 with monthly rent set at \$1,000.00 (**Exhibit L # 1**). The landlord stated the tenant has not paid rent for the lower-level apartment in the single detached two apartment home for January, February or March of 2024.
13. The landlord stated the tenant was last at a zero balance in December 2023.
14. The landlord testified on 3 January 2024, the tenant had contacted him and informed that he had lost his telephone, the landlord's contact e-mail address and that rent for January 2024 would be paid in the coming days.
15. The landlord stated on 8 January 2024, he contacted the tenant by electronic mail requesting the rent for January 2024 by the middle of January 2024. After not receiving the rent for January 2024, the landlord stated he issued the tenant a Notice of Termination for non-payment of rent on 28 January 2024 by serving the tenant by electronic mail and also by placing it on the entry way of the rental unit.
16. As of the date of the hearing (6 March 2024), the landlord stated he has not received any rent for January, February or March 2024 and he was seeking payment of \$3,000.00

Tenant Position

17. The tenant did not dispute that he received the termination notice or the Application for Dispute Resolution. He testified he had experienced recent financial challenges which contributed to him not paying rent for January, February or March 2024.
18. The tenant did not dispute that he has rental arrears of \$3,000.00.

Analysis

19. The landlord submitted termination Notice under Section 19, notice where failure to pay rent with a requested possession of the premises by 9 February 2024 (**Exhibit L # 2**).
20. I accept the landlord's claim that the tenant has not paid rent as required. I also accept testimony of the tenant confirming that there are rental arrears owing.
21. Non-payment of rent is a violation of the rental agreement. The landlord had amended the claim at the outset to add rent to include rent between 1 January 2024 and 31 March 2024. This tribunal does not consider future rent.
22. Rent for March 2024 can only be calculated up to and including the day of the hearing (6 March 2024). That calculation is $(\$1,000.00 \times 12 \text{ months} = \$12,000.00 \div 366 \text{ days} = \textbf{\$32.79}$ per day $\times 6 \text{ days} = \196.74 . Rent for 1 March 2024 – 6 March 2024 is **\$196.74**.
23. Additionally, the tenants are responsible for rent, on a daily basis, in the amount of **\$32.79** beginning on 7 March 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

24. The tenant shall pay rental arrears owing in the amount of **\$2,196.74**.

Issue 2: Late Fees- \$75.00

25. 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 January 2024.
26. 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*".
27. 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.

28. Upon review of the rental ledger offered by the landlord (**Exhibit L # 4**), I observe the late fees indicated on that piece of evidence suggests \$76.00 of late fees. As indicated in paragraph 6 herein, the landlord amended his application during the hearing. 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

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

Issue 3: Vacant Possession of Rented Premises

30. The landlord issued the tenant a notice to terminate under section 19 of the *Residential Tenancies Act*, 2018 on 28 January 2024, with a request for the tenant to be out of the rental by 9 February 2024 (**Exhibit L # 2**).
31. The landlord stated the tenant has not vacated the rented premises as of the date of this hearing and is seeking an order for vacant possession.

Analysis

32. 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.

33. According to the landlord's testimony, the tenant has carried forward rental arrears since January 2024. The tenant did not dispute this. The tenant also did not dispute that he was served the termination notice was placed on the entry way of the rental and by e-mail.

34. As the tenant has not paid the rental arrears prior to being issued termination date on 28 January 2024 and as the notice meets the timeframe requirements set out in section 19 of the Act, it is a valid notice.

Decision

35. The landlord's claim for an order for vacant possession succeeds.

Issue 4: Hearing Expenses- \$20.00

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

Analysis

37. I find the landlords are entitled to the \$20.00 hearing expense reimbursement as their application succeeds.

Decision

38. Hearing expenses in the amount of **\$20.00** is awarded.

Summary of Decision

39. The landlord is entitled to the following:

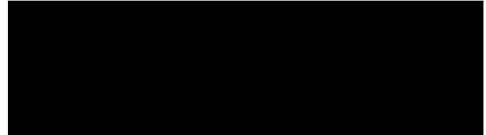
- A payment of **\$2,291.74**, determined as follows:

a) Rent owing	\$2,196.74
b) Late Fees.....	\$75.00
c) Hearing Expense.....	\$20.00

- An order for vacant possession of the rented premises.
- A payment of a daily rate of rent in the amount of **\$32.79**, beginning 7 March 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.

25 March 2024

Date



Michael J. Reddy
Residential Tenancies Office