

Residential Tenancies Tribunal

Application 2024-0178-NL

Decision 24-0178-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM 2 April 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. The landlord offered testimony and did not call any witnesses.
3. The respondents, [REDACTED], hereinafter referred to as “tenant1”, and [REDACTED], hereinafter referred to as “tenant2”, both did not attend the hearing. At 9:03 AM prior to the start of the hearing, I attempted to reach tenant1 by telephone ([REDACTED]), at which time there was no contact established. At 9:04 AM prior to the start of the hearing, I contacted tenant2 by telephone ([REDACTED]), at which time tenant2 stated she would not be taking part in the hearing and stated, “I have not lived there in nine months”.

Preliminary Matters

4. The tenants were served an application for dispute resolution by e-mail to [REDACTED] and [REDACTED] on 21 March 2024 at approximately 10:58 am (Exhibit # 6). 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 they have been properly served. As the tenants were properly served, and as further delay in the proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. The landlord did not amend his application at the hearing.
6. The landlord testified during the hearing that he found out about a month prior to the hearing that tenant2 had left the rental property during the summer 2023. He noted that he was not provided notice by tenant2 that she was leaving.

7. 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.

Issues before the Tribunal

8. The landlord is seeking the following:
- An order for payment of rent in the amount of **\$395.00**;
 - Late Fees in the amount of **\$75.00**;
 - An order for vacant possession of the rented premises;
 - Compensation for damages of **\$2,000.00**
 - Security Deposit used against monies owing of **\$400.00**
 - Hearing Fee in the amount of **\$20.00**; and

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
10. Also relevant and considered in this case is sections, 18, 19, 34, 35 and 42 of the *Residential Tenancies Act*, 2018. Also, section 09-003 of the *Residential Tenancies Program Policy Manual*.

Relevant Submissions

11. The details of the claims were presented as a written monthly rental agreement (Exhibit L # 1) with rent set at \$650.00, pay own utilities, and due on the 1st of each month. There was a security deposit set in the amount of \$400.00 collected in full on 5 November 2022, and both tenant's took up residency at [REDACTED], on 1 December 2022. On the date of hearing, tenant1 remained in the unit. Tenant2 vacated the rental unit during summer 2023.
12. The landlord has issued several notices to terminate as follows:
- A notice to terminate was sent electronically to the tenants under section 19 of the *Residential Tenancies Act*, 2018 on 16 September 2023 with a request for the tenants to be out of the rental by 27 September 2023 (Exhibit L # 2).
 - On 23 January 2024, the landlord issued the tenants a notice to terminate electronically under section 19 of the *Act*, with a request to be out of the rental by 3 February 2024 (Exhibit L # 3).
 - On 23 January 2024, the landlord issued the tenants a notice to terminate, electronically, under section 18 of the *Act*, with a request to be out of the rental by 30 April 2024 (Exhibit L # 4).

- On 8 February 2024, the landlord issued both tenants electronically, a notice to terminate under section 19 of the Act, with a request to be out of the rental by 19 February 2024 (Exhibit L # 5).

Issue 1: Rent Owing- \$395.00

13. The landlord stated the tenants were last at a zero balance in August 2023. Along with his application, the landlord also offered a rental ledger for the single-family home (**Exhibit L # 7**). This piece of evidence presents up to 1 March 2024, and demonstrates that the tenants held rental arrears of \$395.00 which started to incur on 4 August 2023. While some rent has been paid, the following remains outstanding:

Date	Rent Owed	Rent Paid	Outstanding rent
August 2023	650.00	550.00	\$100.00
January 2024	650.00	400.00	\$250.00
February 2024	650.00	605.00	\$45.00
			\$395.00

Analysis

14. I accept the landlord's claim the tenants have not paid rent as required. Both the testimony of the landlord and the evidence offered with his application reflects the tenants carrying forward rental arrears since August 2023. Tenant1 has been making rental payments and the landlord confirmed that he paid \$650.00 rent for the month of March 2024; however, he has not yet cleared the rental arrears owing in the amount of \$395.00.
15. Non-payment of rent is a violation of the rental agreement. This Tribunal does not, however, consider future rent. There was no testimony offered by the landlord during the hearing (2 April 2024) that tenant1 has not paid rent for April 2024. Therefore, this decision will only rule on the rental arrears owing up until 31 March 2024.

Decision

16. The tenants shall pay rental arrears owing in the amount of **\$395.00**.

Issue # -2- Late Fees

17. 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 August 2023.
18. 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*".
19. 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.

20. I find that the tenants have owed late payment fees in the maximum amount since September 2023 and the landlord is entitled to the maximum fee of \$75.00.

Decision

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

Issue 3: Vacant Possession of Rented Premises

22. The landlord issued the tenants three notice's to terminate under section 19 of the *Residential Tenancies Act*, 2018 on the following dates:
- 16 September 2023 to be out on 27 September 2023
 - 23 January 2024 to be out on 3 February 2024
 - 8 February 2024 to be out on 19 February 2024
23. In addition to the Section 19 notices issued, the landlord also issued a Section 18 notice on 23 January 2024 with a request to be vacate the premises on 30 April 2024.
24. Applicable to this situation and Application for Dispute Resolution is Policy 07-001 of the *Residential Tenancies Program, Notice of Termination*. As stated in that policy,

Termination by More than 1 Notice

"If a termination notice is already in place and a second notice is issued by either party whereby the termination date is earlier than that specified in the first notice, then as long as this second notice is valid, the tenant is required to vacate on the date specified in the second notice. If a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated there they are intending the tenancy to be extended to the date set out in the second notice.

25. The same applies to multiple termination notices. The validity of the Section 19 Termination Notice issued on 8 February 2024 will be the focus of this decision.
26. In regards to the Section 19 notice issued to the tenants on 8 February 2024 with a request vacate by 19 February 2024, the landlord offered testimony during the hearing that the tenants were served this notification via electronic mail which is one of the identified means of service in the *Act*.
27. 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

28. 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.

29. According to the landlord's testimony, the tenants have carried forward rental arrears since August 2023.

30. As the tenants have not paid the rental arrears prior to being issued a termination notice on 8 February 2024 and as the notice meets the timeframe and all other technical requirements set out in section 19 of the *Act*, it is a valid notice. The tenants should have vacated the property on 19 February 2024.

Decision

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

Issue 4: Compensation for damages- \$2000.00

32. The landlord was seeking damages to the rental property which he attributed to smoking inside the property. He testified during the hearing that on 21 February 2024, his agent attended [REDACTED] to conduct an inspection on the rental home. At that time, the landlord testified his agent informed him that there was a strong

odor of tobacco/other smoke in the house in violation of the rental agreement and it appeared to be in need of repainting.

33. The landlord described the rental property as, “an older home” and testified he did not have pictures to support his claim and summarized, “I would have to go in and assess the damages. I don’t believe there are any physical damages”.

Analysis

34. The landlord is seeking \$2,000.00 for compensation of damages which he attributed to smoking inside the rental property. Accordingly, in any damage claim, the applicant is required to show: that the damage exists; that the respondent is responsible for the damage, through willful or negligent act; and the value to repair or replace the damaged item(s).
35. Additionally, Residential Tenancies Policy 09-003 identifies requirements of damage claims. As stated within that policy, *“When making a claim for damages, the applicant shall indicate the total amount of the claim and a detailed breakdown of the damages, with each item valued. Claims exceeding the amount of the security deposit shall be accompanied by at least one independent written estimate or receipt(s).”* The landlord did not provide a independent written estimate of his damage claim.
36. In this instance, the landlord did not provide any direct evidence that the damage exists and/or that any damage was caused by the willful or negligent actions of the tenant. Furthermore, there was no breakdown of damages, estimates or receipts, nor any evidence and pertinent information to determine depreciation. The only evidence provided was that of secondhand information relayed to him by his agent, for which no affidavit or direct testimony was provided. Furthermore, the landlord testified that for a damage claim, he would “have to go in and assess the damages”.
37. The landlord did not provide sufficient evidence, testimony and information with his application to support his claim for compensation for damages. The claim fails on evidentiary grounds.

Decision

38. The landlord’s claim for damages fails.

Issue 5: Security Deposit used against monies owing- \$400.00

39. The landlord testified there was a security deposit collected on the tenancy in the amount of \$400.00 (Exhibit L # 1). As the landlord’s claim for rental arrears and late fees has succeeded, the security deposit shall be applied against the monies owed.

Decision

40. The landlord’s claim for retention on the security deposit succeeds.

Issue 6: Hearing Expenses- \$20.00

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

Analysis

42. I find the landlord is entitled to the \$20.00 hearing expense reimbursement as their application succeeds.

Decision

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

Summary of Decision

44. The landlord is entitled to the following:

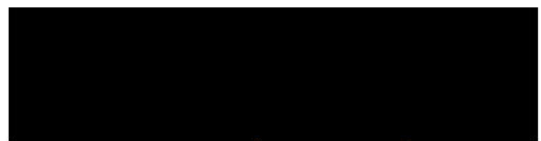
- A payment of **\$90.00**, determined as follows:

a) Rent owing	\$395.00
b) Late Fees.....	\$75.00
c) Hearing Expense.....	\$20.00
d) Less Security Deposit.....	\$400.00
e) Total.....	<u>\$90.00</u>

- An order for vacant possession of the rented premises.
- The tenants 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.

16 May 2024

Date



Michael J. Reddy
Residential Tenancies Office