

Residential Tenancies Tribunal

Application 2024-0182-NL

Decision 24-0182-00

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 8:59 a.m. on 9-April-2024.
2. The applicant, [REDACTED], represented by [REDACTED] (authorized representative) hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with his application stating that he had served the tenant personally with the notice of hearing on 26-March-2024 (LL#1). The respondent confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a verbal month to month rental agreement which commenced on 28-June-2023. Rent is \$950.00 per month due on the first of each month. A security deposit was never paid.
6. The landlord amended the application to increase rent paid from \$3650.00 as per application to \$4600 to include rent for the month of April.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$4600
 - Late fees \$75.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent. Also, relevant and considered is Section 12-1 of the *Residential Tenancies Policy Manual: Fees*.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 1-March-2024, with a termination date of 12-March-2024 (LL#2).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since August 2023, and although payments have been made, the tenant continued to carry a negative balance resulting in an outstanding amount of \$4600.00.

Analysis

12. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

- (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

*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.*

(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.

13. The tenant was in rental arrears in excess of the 5 days when the termination notice was served. On the date of termination, 12-March-2024 the tenant was still in arrears. In accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the *Act* and is a valid notice.

14. I find that the tenant should have vacated the property by 12-March-2024.

Decision

15. The landlord's claim for an order for vacant possession of the rented premises succeeds.

Issue # 2: Rent paid \$4600.00

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$4600.00 dating back to August 2023. The landlord submitted a copy of the rental ledger to support their claim (LL#3). See copy of ledger below:

June 28	July Rent	950.00	950.00	0
Sept 20	August Rent	950.00	600.00	350.00
Oct 20	September Rent	1300.00	700.00	600.00
Nov 8	October Rent	1550.00	1000.00	550.00
Nov 18	November Rent	1500.00	800.00	700.00
Jan 22	December Rent	1650.00	850.00	800.00
	January Rent	1750.00	0	1750.00
	February Rent	2700	0	2700
	March Rent	3650	0	3650

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$4600.00 for the period of 1-August-2023 to 30-April-2024. The landlord is seeking rent to be paid in full.

Analysis

18. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises.

19. The rental ledger is amended to show a daily rate for April as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-April-2024 to 9-April-2024 in the amount of \$280.35.

Amended Rental Ledger 2024-0182-NL			
Date	Action	Amount	Total
July 31 2023		Balance	\$0.00
August 1 2023	Rent due	\$950.00	\$950.00
September 1, 2023	Rent due	\$950.00	\$1,900.00
September 20 2023		Payment	-\$600.00
October 1 2023	Rent due	\$950.00	\$2,250.00
October 20 2023		Payment	-\$700.00
November 1 2023	Rent due	\$950.00	\$2,500.00
November 8 2023		Payment	-\$1,000.00
November 18 2023		Payment	-\$800.00
December 1 2023	Rent due	\$950.00	\$1,650.00
January 1 2024	Rent due	\$950.00	\$2,600.00
January 22 2024		Payment	-\$850.00
February 1 2024	Rent due	\$950.00	\$2,700.00
March 1 2024	Rent due	\$950.00	\$3,650.00
April 1 - 9 2024	Rent due	\$280.35	\$3,930.35

Daily rate: \$950 x 12 mths = \$11400
\$11400 / 366 days = \$31.15 per day

20. The tenant shall pay a daily rate of \$31.15 until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for rent succeeds in the amount of \$3930.35.

Issue # 3: Late fees \$75.00

22. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

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.

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

23. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* states:

Late payment fee:

A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.

24. The landlord's rental ledger shows that the tenant has been in arrears since 1-August-2023. I find that the maximum allowable late fee of \$75.00 as set by the Minister is a legitimate charge as stated above.

Decision

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

Summary of Decision

26. The tenant shall pay the landlord \$4005.35 as follows:

Rent	\$3930.35
Late fees	75.00
Total.....	<u>\$4005.35</u>

27. The tenant shall pay a daily rate of rent beginning 10-April-2024 of \$31.15, until such time as the landlord regains possession of the property.

28. The tenant shall vacate the property immediately.

29. 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.

30. The landlord will be awarded an Order of Possession.

April 25, 2024

Date

Michael Reddy
Residential Tenancies Office