

Residential Tenancies Tribunal

Application 2024-0301-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 8 May 2024 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED] and hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing and was not represented. I attempted to contact the respondent prior to the hearing by telephone at [REDACTED] at 1:48 PM at which time the tenant stated he was not aware of the scheduled hearing. The telephone call with either disconnected or dropped.

Preliminary Matters

4. The tenant was not present or represented at this hearing and I attempted to contact the respondent prior to 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 she has been properly served. The landlord submitted an affidavit with his application stating the tenant was served, by registered mail ([REDACTED]), on 10 April 2024 (**Exhibit L # 3**). The Canada Post Tracking information indicates the tenant signed for the delivery package on 12 April 2024 (**Exhibit L # 4**). 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.
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.

6. The landlord amended his application at the hearing to include hearing expenses (\$20.00) and to include rental arrears for the month of May 2024.

Issues before the Tribunal

7. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$1,711.00
 - An order for vacant possession of the rented premises
 - Late fees in the amount of \$75.00; &
 - An order for hearing expenses

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 case is S. 19, 34, 35, and 42 of the *Residential Tenancies Act*, 2018.

Issue 1: Rental Arrears of \$1,711.00

Landlord Position

10. The details of the claims were presented as a written monthly rental agreement with rent set at \$882.00 and due on the 1st of each month. There was a security deposit collected on this tenancy on 21 October 2022, still in possession of the landlord, in the amount of \$645.00. The tenant moved into the rental unit located at [REDACTED] in November 2022 and remains in the property on the date of the hearing (8 May 2024).
11. The landlord stated the tenant was carrying a rental credit in the amount of \$53.00 on 21 February 2024. Since that time, the tenant has not paid rent for either March or April 2024.
12. Along with his application, the landlord provided a rental ledger (**Exhibit L # 5**). This piece of evidence reveals the tenant had incurred rental arrears of \$1,711.00 up until 30 April 2024. The landlord advised that rent has not been since been paid, and they are also seeking rent for the month on May 2024.

Analysis

13. 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 March and May 2024. This tribunal does not consider future rent.

14. The landlord submitted evidence rent was due 1 May 2024 and rental arrears owing by the tenant equaling **\$1,711.00** including up to 30 April 2024.
15. Rent for May 2024 can only be calculated up to and including the day of the hearing (8 May 2024). That calculation is $(\$882.00 \times 12 \text{ months} = \$10,584.00 \div 366 \text{ days} = \$28.92 \text{ per day} \times 8 \text{ days} = \$231.36)$. Rent for 1 May 2024 to 8 May 2024 is **\$231.36**.
16. I accept the landlord's claim that the tenant has not paid rent as required. The tenant owes \$1,942.36. Current Balance of rental arrears is **\$1,942.36**.
17. Additionally, the tenant is responsible for daily rent in the amount of **\$ 28.92** beginning on 9 May 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

18. The landlord's claim for a payment of the rent succeeds in the amount of **\$1,942.36**.

Issue 2: Order for Vacant Possession

19. The landlord issued the tenant a Landlord's Notice to Terminate Early- Cause by placing it on the door of the rental unit on 4 April 2024 with a request for the tenant to exit the property by 5 April 2024 (**Exhibit L # 2**).

Analysis

20. 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),*

a. (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.*

b. (4) In addition to the requirements under section 34, a notice under this section shall

i. be signed by the landlord;

- ii. *state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- iii. *be served in accordance with section 35.*

21. The tenant had been in rental arrears in excess of the 5 days when the notice was issued on 04 April 2024 to be out of [REDACTED] on 15 April 2024. The termination date given is not less than ten clear days after the notice was issued and is in compliance with section 19(1)(b)(ii).

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

Decision

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

Issue 3: Late Fees- \$75.00

24. The landlord offered evidence of a rental ledger prior to the hearing (**Exhibit L # 5**). During the hearing, the landlord offered testimony that the tenant has carried late fees since 5 March 2024.

25. 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*".

26. 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.

27. I find that the tenant has owed late payment fees in the maximum amount since 5 March 2024 and the landlord is entitled to the maximum amount late fee of \$75.00.

Decision

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

Issue 4: Hearing Expense

29. The landlord offered evidence that hearing expense included the application fee of \$20.00 and also requested the cost of registered mail be included in with the hearing

expenses. While the receipt for the \$20.00 application for hearing was entered into evidence (**Exhibit L # 6**), there was no evidence related to the registered mail fee.

30. I find the landlord's claim for hearing expense fee succeeds in the amount of \$20.00.

Decision

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


Summary of Decision

32. The landlord is entitled to the following:

- A payment of **\$2,037.36**, as determined as follows:
 - a) Rent owing\$1,942.36
 - b) Late Fees.....\$75.00
 - c) Hearing Expense.....\$20.00
 - d) Total.....**\$2,037.36**
- An order for vacant possession of the rented premises;
- A payment of a daily rate of rent in the amount of **\$28.92**, beginning by 9 May 2024 and continuing to the date the landlord obtains vacant possession of the rental unit; and
- 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.

29 May 2024

Date


Michael J. Reddy
Residential Tenancies Office