

Residential Tenancies Tribunal

Application 2024-0740-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 12 September 2024 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him as there was no telephone contact information available to me. 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 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 their application stating that they had served the tenant with the notice of hearing by registered mail ([REDACTED]) on 15 August 2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. There is a written month to month rental agreement which commenced in September 2022 (LL#2). Rent is currently \$ 570.00 per month, due on the first of each month. A security deposit was never collected on the tenancy.

6. The landlord amended the application to increase rental arrears from \$7,460.00 to \$8,030.00 to include outstanding rent for the month of September 2024. The landlord also requested hearing expenses.
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 of Vacant Possession of the rental property
- Rent paid in the amount \$8,030.00
- Hearing Expenses in the amount of \$20.00

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* (*the Act*).
10. Also relevant and referred to in this decision are Sections 19, 34 and 35 of the *Act*.

Issue 1: Vacant Possession of the Rental Premises

11. The landlord testified the tenant took occupancy of the rental premises on 9 September 2022. Along with the application, the landlord supplied a copy of the written rental agreement (LL#2) and a copy of a rental ledger (LL#3). The landlord testified the tenant has carried rental arrears since 5 October 2022 and on 6 June 2024 the tenant was issued a termination notice under Section 19 of the *Residential Tenancies Act, 2018*, via express post (██████████), with a request for the tenant to vacate by 26 June 2024 (LL#4). On the date of the hearing (12 September 2024), the tenant remains in the rental premises.

Analysis

12. Section 19, Notice where failure to pay Rent, of the *Residential Tenancies Act, 2018* states:

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. Rent is required to be paid by a tenant for the use or occupancy of a residential premises. The tenant had been in rental arrears in excess of 5 days when the notice was serviced on 6 June 2024 to be out of the rental premises by 26 June 2024. On the date of termination, 26 June 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. The tenant should have vacated the property by 26 June 2024.

Decision

15. The landlord's claim for vacant possession succeeds.

Issue 2: Rent Paid \$8,030.00

16. The landlord testified that rent is outstanding in the amount of \$8,030.00, and since 5 October 2022 the tenant has always carried rental arrears forward. Along with the application, the landlord provided a rental ledger (LL#3) which is partially reproduced in the analysis below. In addition to the rental ledger provided, the landlord testified that the tenant has also incurred arrears for September 2024.

Analysis

17. Non-payment of rent is a violation of the rental agreement. The landlord amended the application as indicated herein and are seeking rental arrears up to 30 September 2024 equaling \$8,030.00.

18. The rental ledger supplied indicates by 1 November 2022, the tenant owed \$1,140.00. Since that time, the tenant has continued to incur rental arrears. That piece of evidence indicates the following:

Date	Transaction	Amount Due	Payment	Balance
1 May 2024	Rent due	\$570.00	\$0.00	\$6,200.00
3 May 2024	Payment		\$450.00	\$5,750.00
1 Jun 2024	Rent due	\$570.00	\$0.00	\$6,320.00
1 July 2024	Rent due	\$570.00		\$6,890.00
1 Aug 2024	Rent due	\$570.00		\$7,460.00

19. As this tribunal does not include future rent, rent for September 2024 can only be calculated up to and including the day of the hearing (12 September 2024). That calculation is: $\$570.00 \times 12 \text{ months} = \$6,840.00 \div 366 \text{ days} = \$18.69 \text{ per day} \times 12 \text{ days} = \224.28 . Rent owing for September 2024 is **\$224.28**.

20. The tenant owes rental arrears of **\$7,684.28**.

Decision

21. The landlord claim for rental arrears succeeds in the amount of **\$7,684.28**.

22. Additionally, the tenant is responsible for a daily rent in the amount of **\$18.69** beginning on 13 September 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Issue 3: Hearing Expenses

23. The landlord offered evidence of the application fee (LL # 5) and is seeking compensation. As the application succeeds, in accordance with Residential Tenancies Program Policy 12-001, the landlord claim for hearing expenses succeeds.

Decision

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

Summary of Decision

25. The landlord is entitled to the following:

- A payment of **\$7,704.28**, as determined as follows:

a) Rental Arrears.....	\$7,684.28
b) Hearing Expense.....	\$20.00
c) Total.....	<u>\$7,704.28</u>
- An Order of Vacant Possession of the rented premises.
- A payment of a daily rate in the amount of **\$18.69**, beginning on 13 September 2024 and continuing to the date the landlord obtains vacant possession of the rental premises.
- The tenant shall also pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the Order of Possession.

07 October 2024
Date


Michael J. Reddy
Residential Tenancies Office