

Residential Tenancies Tribunal

Application 2024-0754-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:51 p.m. on 7-October-2024.
2. The applicant, [REDACTED], represented by [REDACTED], 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 their application stating that they had served the tenant with the notice of hearing via prepaid registered mail ([REDACTED]) on 10-September-2024 (LL#1). The tenant confirmed receipt of the document on 11-September-2024. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month to month rental agreement which commenced on 1-December-2010. Rent is \$100.00 per month due on the first of each month. A security deposit was never paid.
6. The landlord amended the application to decrease *rent paid* from \$2469.00 as per the application to \$669.00 and to include hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for vacant possession of the rented premises.
 - Rent paid \$669.00
 - Hearing expenses \$20.00

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 is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: Section 12: Recovery of costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

10. The landlord submitted a copy of a termination notice given on a *Landlord's Notice to Terminate Early – Cause* form under Section 19: Notice where failure to pay rent. The notice is signed and dated for 25-July-2024, with a termination date of 31-August-2024 (LL#2). The landlord testified that the termination notice was served via prepaid registered mail on 25-July-2024 and the tenant confirmed receipt of the notice.

Landlord's and Tenant's Positions

11. The landlord testified that rent has been in arrears dating back to 1-May-2023. The tenant did not dispute that rent was in arrears and testified that she made payment in full on 4-October-2024.

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 rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 31-August-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 premises on 31-August-2024.

Decision

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

Issue # 2: Rent paid \$669.00

Relevant Submission

16. The landlord testified that rent is outstanding in the amount of \$669.00 dating back to 1-May-2023. The landlord submitted a copy of the rental ledger to support the claim (LL#3). See breakdown of ledger below:

Rental Ledger 2024-0754-NL			
Date	Action	Amount	Total
May 31, 2024	Balance	\$2,169.00	
June 1, 2024	Rent due	\$100.00	\$2,269.00
July 1, 2024	Rent due	\$100.00	\$2,369.00
August 1, 2024	Rent due	\$100.00	\$2,469.00
September 1, 2024	Rent due	\$100.00	\$2,569.00
September 20, 2024	Payment	-\$2,000.00	\$569.00
October 1, 2024	Rent due	\$100.00	\$669.00

Landlord's and Tenant's Positions

17. The landlord testified that rent is outstanding in the amount of \$669.00 dating back to May 2023. The tenant disputed that rent is in arrears and testified that she made payment in full on October 4, 2024. The landlord testified that it takes 4-5 days for all payments to be processed through their accounting department and wished to proceed with the hearing 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(s) during the use or occupancy of a residential premises. I accept the tenant's testimony that she electronically sent payment to the landlord for the outstanding rental amount in full on 4-October, however the landlord's representative cannot verify that payment has been received to date as it takes 4-5 business days for their accounting department to verify that funds are legitimate. For this reason, I find that the tenant is responsible for outstanding rent. The rental ledger is amended to show a daily rate for October as this tribunal does not consider future rent (see below).

Amended Ledger 2024-0754-NL			
Date	Action	Amount	Total
May 31, 2024	Balance		\$2,169.00
June 1, 2024	Rent due	\$100.00	\$2,269.00
July 1, 2024	Rent due	\$100.00	\$2,369.00
August 1, 2024	Rent due	\$100.00	\$2,469.00
September 1, 2024	Rent due	\$100.00	\$2,569.00
September 20, 2024	Payment	-\$2,000.00	\$569.00
October 1-7, 2024	Rent due	\$22.96	\$591.96

Daily rate: \$100 x 12 mths = \$1200
\$1200 / 366 days = \$3.28 per day

19. I find that the tenant is responsible for outstanding rent for the period of 1-May to 7-October-2024 in the amount of \$591.96.
20. The tenant shall pay a daily rate of \$3.28 until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for *rent paid* succeeds in the amount of \$591.96.

Issue # 3: Hearing Expenses \$20.00

22. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#4). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees can be claimable costs. As the landlord's claim for losses has been successful, I find that the tenant is responsible for the hearing expenses.

Decision

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

Summary of Decision

24. The tenant shall pay the landlord \$611.96 as follows:

Rent paid	\$591.96
Hearing expenses	20.00
Total	\$611.96

25. The tenant shall pay a daily rate of rent beginning 8-October-2024 of \$3.28, until such time as the landlord regains possession of the property.

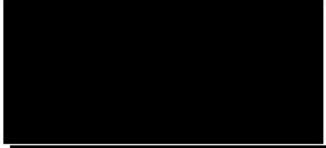
26. The tenant shall vacate the property immediately.

27. 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.

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

October 16, 2024

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office