

Residential Tenancies Tribunal

Application 2024-0852-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 1:47 PM on 16 October 2024.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.

Preliminary Matters

4. The landlord submitted an affidavit of service indicating the tenant was personally served an Application for Dispute Resolution at 12:37 PM on 25 September 2024 (LL#1). The tenant did not dispute she received notice of this hearing more than ten days before the hearing date.
5. There is a written monthly rental agreement which commenced on 1 June 2024 (LL#2). The rental premises is a 5-bedroom house. Rent is \$800.00 per month, due on the first of each month. There was no security deposit collected on this tenancy.
6. Both parties testified the landlord is subject to a no contact order with the tenant at the time of the hearing, however both wished to proceed with the hearing.
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 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 premises

- Rent arrears in the amount of \$2,400.00

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

Relevant Submissions

11. The landlord submitted a copy of a Notice to Terminate Early-Cause under Section 19 of the *Act* (LL#3) with a request for the tenant to vacate the rental premises on 25 August 2024. The notice was signed and dated 14 August 2024.

Landlord Position

12. The landlord testified the tenants took occupancy of the rental premises on 1 June 2024. Along with his application, he supplied a copy of the written rental agreement (LL#2). The landlord stated since taking occupancy, the tenant had not paid rent for June, July, August 2024, and he issued a termination notice. The landlord stated that as there was a 'no contact order' in place between the parties, he gave the termination notice to his mother to provide to the tenant on 14 August 2024. On the date of the hearing (16 October 2024), he stated the tenant's personal belongings remain in the rental premises, and therefore she also owed him rent for September and October.

Tenant Position

13. The tenant disputes the landlord's testimony and stated that there was a letter put through the door with her name on it. She was with the landlord's mother at the time, and did not know what the letter was for. She states that she gave it to the landlord's mother who took it back to her place. She testified that she is no longer in the rental premises, and she and her son left in the middle July 2024. The tenant stated she attended the rental premises in August after vacating in attempts to collect personal belongings, but the landlord had changed the locks to the rental premises, and she was unable to access her personal belongings. This claim was not disputed by the landlord. The tenant testified the landlord informed her that she could only gain access to collect her belongings if she hired a moving company which she was unable to afford. She stated she would have to rely on family and friends for a truck, who have limited availability.

Decision

14. To receive an order of vacant possession, a landlord must have submitted a valid termination notice, which complies with all relevant sections of the *Act*. In this instance, while the exact date of vacancy was not clear through the testimony of the parties,

neither disputed the fact that the tenant has already vacated the rental premises. This renders an order for vacant possession immaterial.

15. I decline to render a decision on this issue.

Issue 2: Rent Paid

Landlord's and Tenant's Positions

16. The landlord testified the tenant moved into the rental premises on 1 June 2024 and has not paid rent for June, July, August 2024. He was seeking \$2,400.00 and testified that since some of her belongings remained on the premises he was also owed rental arrears for September and October 2024. There was no rental ledger supplied by the landlord along with his application.
17. The tenant refuted the landlord's testimony and stated that she already gave the landlord \$2100.00 for rent and would not be paying the landlord. She testified that she and her son left because they were being harassed, and the landlord was spreading rumors about her in the community. She supplied evidence of electronic transfers she made to the landlord (T#1), which she testified was for rent, which she stated she started paying before moving into premises. The evidence demonstrates 15 monetary transfers from the tenant to the landlord between March and June 2024, ranging from \$6.00 to \$385.00 for a total of \$1869.00. Following these statements, the tenant conceded that she would pay an extra \$300.00 for rent for the month of August.
18. The landlord refuted the tenant's testimony saying it was "all lies" and that the money she was sending him was to repay money that she had borrowed, and that she kept giving him a sad story that she would be getting the money to him soon.
19. The tenant again refuted the landlord's testimony and accused him of lying. She testified that she had borrowed money from his mother and his uncle and paid them back. She noted that the couple of transactions showing from him were because she was going to the store and he asked her to pick some things up for him. The evidence provided by the tenant showed 6 monetary transfers from the landlord to the tenant during that period of a total of \$226.00.

Analysis

20. There remains an unresolved issue between the two parties regarding the tenant's belongings, access to those belongings by the tenant, as well as storage of the belongings by the landlord. However, this issue was not brought forward in the application for dispute resolution and cannot be considered in this decision. It is also noted that there is no application for disposal or sale of abandon personal property on file with the Residential Tenancies Office. As such, only the alleged non-payment of rent for the period of June, July and August will be considered for analysis.
21. 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.

22. While the move in date of 1 June 2024 is not in dispute, there are several inconsistencies in the testimony and/or evidence of both parties, with respect to the timeframe in which the tenant had use or occupancy of the residential premises:

- The landlord provided a notice of termination with a move out date of 25 August 2024 and testified that the tenant moved out on 26 August 2024 but left her belongings.
- The tenant testified that she left the premises in the middle of July 2024 alleging that the landlord made threats and false allegations against her. There was no termination notice provided by the tenant.
- The tenant further testified that she returned in August 2024 to get her belongings, but as of the 11 August 2024 the doorknob had been changed.
- The landlord testified that he did not change the doorknob, and was camping from the 6 – 11 August 2024, and his father installed a doorknob the next day.

23. There are also inconsistencies regarding whether any rent monies were paid; and if so, how much rent might be owing:

- The landlord claims \$2400.00 rent is owed for June, July and August 2024.
- The landlord claims that rent is owing for September and October 2024 as the tenant has not claimed her belongings; however, the tenant claims the landlord has denied her access to her property.
- The tenant testified that she paid \$2100.00 rent in multiple transactions between March and June 2024; but provided screen shots of transactions from herself to the landlord totaling \$1869.00.
- These monies are disputed by the landlord as rental payments, stating that they are repayments of monies that the tenant had borrowed.
- The tenant disputes the landlords claims that she borrowed money from him.
- The tenant concedes that she will pay an “extra \$300.00” for August rent, but already gave the landlord \$2100.00.

24. In an application for dispute resolution, the onus is on the applicant (the landlord) to provide sufficient evidence to support his claim, and as the adjudicator, I must render a decision based on the totality of evidence. The evidence presented is sufficient to demonstrate that a rental agreement was entered into, beginning on 1 June 2024 at \$800.00 per month. Beyond that, there was little evidence presented, other than inconsistent and contradictory testimony between the parties. The frequent referrals of the parties to a ‘no contact order’, police involvement and various accusations back-and-forth during the hearing, also demonstrates an acrimonious relationship which appeared to have begun early in the tenancy. Based on these factors, I am unable to determine on the balance of probabilities which of the conflicting testimonies is the more accurate. I conclude that I have insufficient evidence to determine what, if any, rent arrears are owing. This portion of the landlords claim does not succeed on evidentiary grounds.

Decision

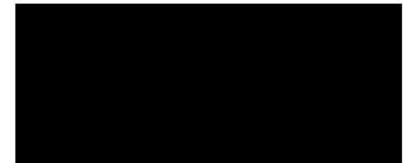
25. The landlord’s claim for rental arrears in the amount \$2,400.00 does not succeed.

Summary of Decision

26. The landlord's claim for rental arrears in the amount \$2,400.00 does not succeed.

5 February 2025

Date



Michael Reddy, Adjudicator
Residential Tenancies Office