

Residential Tenancies Tribunal

Application 2022-No.93 -NL

Decision 22-0093-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:07 a.m. on 04-May-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
4. The tenant provided a witness, [REDACTED], hereinafter referred to as “the witness,” she also attended by teleconference.

Preliminary Matters

5. The landlord did not submit an affidavit, he stated that he served the tenant electronically via text message on 17-March-2022 of notification of the hearing. The tenant confirmed the service and stated that she also received a paper copy of the documents on 20-March-2022.
6. The landlord amended his application to increase rent from \$2,100.00 to \$7,500.00 to reflect the current amount of rent due.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent \$7,500.00
 - Security deposit applied against monies owed \$350.00
 - Vacant possession of rental premises

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 14: Security deposit, and Section 19: Notice where failure to pay rent, as well as Policy 04-002 Tenant's Request for Repairs.

Issue 1: Rent \$7,500.00

Landlord's Position

10. The landlord said that he had a verbal rental agreement with the tenant, he was unclear about many of the terms. He agreed to the terms stated by the tenant as follows: tenant moved in the end of January 2021, she received the keys on 12-January-2021 and did some cleaning of the apartment prior to moving in. She pays \$700.00 a month, her utilities are not included in her rent. The rental period is from the first day of the month to the last day; rent is due in full on the 1st. The tenant paid \$350.00 security deposit, she paid part of it in December 2020 and finished paying for the deposit on 05-January-2021. The landlord confirms that he is still in possession of the deposit.
11. The landlord submitted a rent ledger (LL#01) that he updated to present day,

Rent ledger
2022-No.93-NL

Date	Action	Amount	total
1-Apr-21	rent due	700.00	700.00
20-Apr-21	rent paid	-700.00	0.00
1-May-21	rent due	700.00	700.00
20-May-21	rent paid	-700.00	0.00
1-Jun-21	rent due	700.00	700.00
18-Jun-21	rent paid	-700.00	0.00
1-Jul-21	rent due	700.00	700.00
20-Jul-21	rent paid	-700.00	0.00
1-Aug-21	rent due	700.00	700.00
20-Aug-21	rent paid	-700.00	0.00
1-Sep-21	rent due	700.00	700.00
21-Sep-21	rent paid	-700.00	0.00
1-Oct-21	rent due	700.00	700.00
20-Oct-21	rent paid	-700.00	0.00
1-Nov-21	rent due	700.00	700.00
1-Dec-21	rent due	700.00	1400.00
1-Jan-21	rent due	700.00	2100.00
1-Feb-21	rent due	700.00	2800.00
1-Mar-21	rent due	700.00	3500.00
1-Apr-21	rent due	700.00	4200.00

1-May-21	rent due daily rate applied May 01-04	92.04	4292.04
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Daily rate \$700.00 x 12months = \$8,400.00 a year
\$8,400.00 per year divided by 365 days = \$23.01 a day
4 days x 23.01 = \$92.04

12. The landlord said he has not received rent from the tenant since October 2021 and he is claiming the full amount owed.
13. The landlord said he has attempted to deliver the fridge to the tenant's apartment and she won't answer his calls and set up a time for delivery. He said he didn't know she had done repairs to the apartment and he said if she supplies receipts, he will reimburse her.

Tenant's Position

14. The tenant acknowledges that she hasn't paid rent since October and said that she does have his rent. She said that she had done work in the apartment and was expecting to be compensated. She said she is waiting on a washer, dryer, fridge, stove and smoke detector and she is withholding rent until the landlord fulfills these obligations to her.

Analysis

15. According to Residential Tenancies Program, Policy 04-002:

"A tenant who requires a landlord to make repairs to the rental unit, may give the landlord a written request to make the necessary repairs within a reasonable time."

And

"Before submitting an application for Dispute Resolution seeking an order for the landlord to make repairs, the tenant must:

- *Serve a request to make repairs on the landlord and allow a reasonable time for the landlord to undertake the repairs; and*
- ***Ensure rent is not in arrears"***.

16. Non-payment of rent is a violation of the rental agreement. The landlord and tenant both confirm that no rent has been paid since 20-Octboer-2021.
17. A daily rate of rent was determined for the month of May as this tribunal does not consider future rent.
18. The tenant shall pay the landlord the rent owed totaling \$4,292.04.

Decision

19. The landlord's claim for rent succeeds in the amount of \$4,292.04.

Issue 2: Security deposit applied against monies owed \$350.00

Relevant Submissions

20. The landlord and tenant confirmed in paragraph 10 that the tenant paid a security deposit of \$350.00. The landlord confirmed he is still in possession of the deposit.

Analysis

21. The landlord's claim for loss has been successful, paragraph 19, and he shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit

Decision

22. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$350.00.

Issue 3: Vacant Possession of the Rental Premises

Landlord's Position

23. The landlord submitted a termination notice (LL#02). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 01-February-2022, with a termination date of 12-February-2022.
24. The landlord said that he served he notice on 01-February-2022; he said he tried to post it to the door but it wouldn't stick so he posted it to the wall.

Tenant's Position

25. The tenant confirms that she received the notice.

26. The tenant's witness said she was present when the landlord served the notice and she provided him the tape and helped stick it to the wall. She also confirms the service,

Analysis

27. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which 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.

.....

28. The tenant was in rent arrears since 02-November-2021 which is in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.
29. The tenant should have vacated the property by 12-February-2022.

Decision

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

31. The tenant shall vacate the premises immediately.
32. 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.
33. The tenant shall pay a daily rate for rent beginning 05-May-2022 of \$23.01, as per paragraph 11, until such time as the landlords regain possession of the property.

Summary of Decision

34. The tenant shall:
 - Pay the landlord \$3,942.04 as follows:
 - Rent \$4,292.04
 - Security deposit applied (350.00)
 - Total \$3,942.04
 - Pay a daily rate of rent beginning 05-May-2022 of \$23.01, until such time as the landlord regains possession of the property.
 - Vacate the property immediately
 - Pay to the landlords 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.

The landlord

- Will be awarded an Order of Possession.
- Shall retain the security deposit of \$350.00.

May 6, 2022
Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office