

Residential Tenancies Tribunal

Application 2022-No.138 -NL

Decision 22-138-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 a.m. on 10-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” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of 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 he has been properly served. The landlord submitted an affidavit (LL#01) with her application stating that she had served the tenant with notice of the hearing, by prepaid registered mail on 12-April-2022, the tracking number indicates that the mail was returned. It is our policy to consider prepaid registered mail delivered after 5 days. 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. The landlord amended her application to increase the claim for rent from \$4,725.00 to \$9,450.00 to reflect the current amount of rent owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$9,450.00
 - Vacant possession of rental premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. 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.

Issue 1: Rent \$9,450.00

Relevant Submissions

9. The landlord said she had a verbal rental agreement with the tenant. She said he moved in on 08-August-2020. The tenant pays \$1,575.00 per month which includes his utilities. The landlord said that they agreed that he could pay his rent bi-weekly to coincide with his payday. She said he paid a security deposit of \$650.00 and she is still in possession of that deposit.
10. The landlord submitted a rent ledger (LL#02)

Rent ledger 2022-No.138-NL				
Date	Action	Amount	total	
1-Oct-21	rent due	1575.00	1575.00	
14-Oct-21		rent paid	-400.00	1175.00
21-Oct-21		rent paid	-1000.00	175.00
30-Oct-21		landlord forgave rent	-175.00	0.00
1-Nov-21	rent due	1575.00	1575.00	
29-Nov-21		rent paid	-1500.00	75.00
30-Nov-21		landlord forgave rent	-75.00	0.00
1-Dec-21	rent due	1575.00	1575.00	
1-Jan-22	rent due	1575.00	3150.00	
1-Feb-22	rent due	1575.00	4725.00	
1-Mar-22	rent due	1575.00	6300.00	
1-Apr-22	rent due	1575.00	7875.00	
1-May-22	rent 01-10 May daily rate	517.80	8392.80	

Daily rate: \$1,575.00 x 12 months = \$18,900.00

\$18,900.00 divided by 365 days = \$51.78

\$51.78 x 10 days in May = \$517.80

11. The landlord stated that the last time the tenant paid rent was 29-November-2021, she points out that he was still behind, however she forgave the balance to try to help him out. She said no rent has been paid since that time and the tenant still lives at the rental.

12. As the landlord's ledger reflected full rent owed for May, and as this tribunal doesn't consider future rent, a daily rate is reflected in the ledger.

Analysis

13. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay rent since 29-November-2021.
14. The tenant shall pay the landlord the rent owed totaling \$8,392.80.

Decision

15. The landlord's claim for rent succeeds in the amount of \$8,392.80

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

16. The landlord submitted a termination notice (LL#03). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 18-February-2022 with a termination date of 01-April-2022.
17. The landlord said that she had served the tenant with a termination notice on 17-February-2022 and he subsequently sent her a "Tenant's Notice of Extension Request" via text. His request is due to loss of employment as a result of the Public Health Emergency. She provided the request (LL#04) and said he had asked to stay, as per the request, until 01-April-2022; so she complied.
18. The landlord said when she complied with the request for extension, she sent a photo copy of the termination notice (LL#03) via text on 18-February-2022 and the tenant responded and asked what the notice was and she told him this is the termination notice with the date you requested.

Analysis

19. 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.

.....

20. The tenant was in rent arrears in since 02 December-2021 when the notice was served on 18-Febraru-2022. 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.
21. The tenant should have vacated the property by 01-April-2022.

Decision

22. The landlord's claim for an order for vacant possession succeeds.
23. The tenant shall vacate the premises immediately.
24. The tenant shall 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.
25. The tenant shall pay a daily rate for rent beginning 11-May-2022 of \$51.78, as per paragraph 10, until such time as the landlords regain possession of the property.

Summary of Decision

26. The tenant shall:
 - Pay the landlord \$8,392.80 for rent owed

- Pay a daily rate of rent beginning 11-May-2022 of \$51.78, until such time as the landlord regains possession of the property.
- Vacate the property immediately
- 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.

The landlord

- Will be awarded an Order of Possession.

May 11, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office