

Residential Tenancies Tribunal

Application 2022-No.259 -NL

Decision 22-0259-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:15 p.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” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and although I was able to reach her by telephone at the start of the hearing, she discontinued the call. 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 his application stating that he had served the tenant with notice of the hearing, electronically on 19-April-2022 to the tenant’s cell phone number. The landlord said that the tenant provided him the cell number and they used it for communication. The landlord also provided a screen shot of the ongoing text conversations (LL#04) showing the notice. 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 her absence.
5. The landlord amended his application to increase rent from \$850.00 to \$1275.00 to reflect the current amount due.

Issues before the Tribunal

6. The landlord is seeking:

- Rent \$1,275.00
- Vacant possession of rental premises
- Hearing Expenses \$20.00

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$1,275.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. He entered a written term agreement with the tenant from 01-March-2022 until 29-February-2023. The tenant pays \$850.00 rent a month. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$425.00 on 02-March-2021 and he is still in possession of the deposit.
10. The landlord said that the tenant moved in 02-March-2022; because of the tenant starting her tenancy after the 1st, the landlord reduced the rent and charged \$800.00 for the first month.
11. The landlord submitted a rent ledger (LL#03)

Date	Action	Amount	total
1-Mar-22	rent due	800.00	800.00
1-Mar-22	rent paid	-800.00	0.00
1-Apr-22	rent due	850.00	850.00
5-Apr-22	rent paid	-425.00	425.00
1-May-22	rent due	850.00	1275.00

12. The landlord said a few days after the tenant moved in, he was at the apartment doing a repair and spoke with the tenant's mother. He said that the mother told him she would be moving out.
13. The tenant then told the landlord that she would only be paying her half of the rent; \$425.00 and he would have to go after her mother for the other half. He said, he told her at the time, that the rental agreement was only with the tenant, as per her request not to put the mother on the agreement. He said that the tenant then told him to use the security deposit for rent because she only has her half. The landlord said he told her if

she couldn't pay the rent, then she would have to move. He reminded her that rent is due in full on the 1st.

14. The landlord said that the tenant paid only half of the rent for April and her payment was late and she has not paid rent since that time.

Analysis

15. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay her full amount of rent in April and that as of the day of the hearing, he had not received any further payments.
16. The tenant shall pay the landlord the rent owed totaling \$1,275.00.

Decision

17. The landlord's claim for rent succeeds in the amount of \$1,275.00.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

18. The landlord submitted a termination notice (LL#04). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 02-April-2022, with a termination date of 13-April-2022.
19. The landlord said that he served the notice to the tenant by taping to her door on 02-April-2022.

Analysis

20. 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.

.....

21. The tenant was not in rent arrears in excess of the 5 days when the notice was served. On 02-April-2022 the tenant's rent had just fallen into arrears. The termination notice does not meet the requirements of the Act and is not a valid notice.

Decision

22. The termination notice with a termination date of 13-April-2022 is not a valid notice.

Issue 5: Hearing expenses reimbursed \$20.00

23. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

24. The tenant shall pay the landlord \$1,295.00 for rent \$1,275.00 and hearing fees \$20.00.

The notice of termination dated 13-April-2022 is not a valid notice.

May 6, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office