

Residential Tenancies Tribunal

Application 2022-No.393-NL

Decision 22-0393-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 23-June-2022.
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" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her 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 she has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by pre-paid registered mail on 16-May-2022, the landlord provided the tracking number which shows the package was received on 10-June-2022. 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 the application to increase rent from \$4,281.00 to \$4,855.00 to reflect the current amount owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$4,855.00
 - 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 \$4,855.00

Relevant Submissions

9. The landlord reviewed the details of the rental agreement with the tenant. She said that the tenant is in a monthly agreement. The agreement is from the first day of the month until the last. Rent is due in full on the first day of every month. The tenant currently pays \$574.00 a month and there is a heat and light subsidy with the rental. The tenant moved in on 28-February-2011. She did not pay a security deposit.
10. The landlord said that the tenant has been in arrears for a long time, she submitted a rent ledger (LL#02) as follows:

Rent ledger
2022-No.393-NL

Date	Action	Amount	total
1-Feb-19	starting balance	-1.00	-1.00
1-Feb-19	rent due	317.00	316.00
1-Mar-19	payment	-317.00	-1.00
1-Mar-19	rent due	317.00	316.00
1-Apr-19	rent due	574.00	890.00
23-Apr-19	payment	-850.00	40.00
1-May-19	rent due	574.00	614.00
10-May-19	payment	-40.00	574.00
1-Jun-19	rent due	574.00	1148.00
1-Jul-19	rent due	574.00	1722.00
5-Jul-19	payment	-300.00	1422.00
16-Jul-19	payment	-400.00	1022.00
1-Aug-19	rent due	574.00	1596.00
1-Sep-19	rent due	574.00	2170.00
25-Sep-19	abatement	-148.00	2022.00
25-Sep-19	abatement	-230.00	1792.00
1-Oct-19	rent due	574.00	2366.00
4-Oct-19	payment	-900.00	1466.00

21-Oct-19		payment	-450.00	1016.00
1-Nov-19	rent due		574.00	1590.00
1-Dec-19	rent due		574.00	2164.00
2-Dec-19		payment	-725.00	1439.00
1-Jan-20	rent due		574.00	2013.00
3-Jan-20		payment	-725.00	1288.00
27-Jan-20		payment	-250.00	1038.00
28-Jan-20		payment	-475.00	563.00
1-Feb-20	rent due		574.00	1137.00
1-Mar-20	rent due		574.00	1711.00
3-Mar-20		payment	-724.00	987.00
1-Apr-20	rent due		574.00	1561.00
3-Apr-20		payment	-725.00	836.00
1-May-20	rent due		574.00	1410.00
5-May-20		payment	-725.00	685.00
1-Jun-20	rent due		574.00	1259.00
2-Jun-20		payment	-725.00	534.00
1-Jul-20	rent due		574.00	1108.00
1-Aug-20	rent due		574.00	1682.00
7-Aug-20		payment	-1300.00	382.00
1-Sep-20	rent due		574.00	956.00
1-Oct-20	rent due		574.00	1530.00
1-Nov-20	rent due		574.00	2104.00
27-Nov-20		payment	-900.00	1204.00
1-Dec-20	rent due		574.00	1778.00
1-Jan-21	rent due		574.00	2352.00
27-Jan-21		abatement	-119.00	2233.00
27-Jan-21		abatement	-120.00	2113.00
28-Jan-21		payment	-300.00	1813.00
1-Feb-21	rent due		574.00	2387.00
1-Mar-21	rent due		574.00	2961.00
1-Apr-21	rent due		574.00	3535.00
5-Apr-21		payment	-996.00	2539.00
1-May-21	rent due		574.00	3113.00
6-May-21		payment	-700.00	2413.00
1-Jun-21	rent due		574.00	2987.00
22-Jun-21		payment	-400.00	2587.00
1-Jul-21	rent due		574.00	3161.00
29-Jul-21		payment	-580.00	2581.00
30-Jul-21		payment	-90.00	2491.00
1-Aug-21	rent due		574.00	3065.00
1-Sep-21	rent due		574.00	3639.00
10-Sep-21		payment	-700.00	2939.00
29-Sep-21		payment	-350.00	2589.00
1-Oct-21	rent due		574.00	3163.00

1-Nov-21	rent due	574.00	3737.00
4-Nov-21	payment	-700.00	3037.00
1-Dec-21	rent due	574.00	3611.00
6-Dec-21	payment	-700.00	2911.00
1-Jan-22	rent due	574.00	3485.00
1-Feb-22	rent due	574.00	4059.00
1-Mar-22	rent due	574.00	4633.00
1-Mar-22	payment	-500.00	4133.00
1-Apr-22	rent due	574.00	4707.00
26-Apr-22	payment	-1000.00	3707.00
1-May-22	rent due	574.00	4281.00
1-Jun-22	rent until hearing date 23-June-22	434.01	4715.01

Daily rate \$574.00 x 12 months = \$6,888.00 per year

\$6,888.00 divided by 365 days = \$18.87 a day

\$18.87 per day x 23 days = \$434.01

11. The tenant was in a surplus position of \$1.00 on 01-March-2019; when rent comes due, she falls into arrears and does not come out of arrears since that time.
12. The landlord is seeking full reimbursement of the rent.

Analysis

13. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant had fallen into rental arrears. As this board doesn't consider future rent, a daily rate has been calculated and inserted into the ledger for the month of June up to the date of the hearing.
14. The tenant shall pay the landlord the rent owed as per the rent ledger totaling \$4,715.01.

Decision

15. The landlord's claim for rent succeeds in the amount of \$4,715.01.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

16. The landlord submitted a termination notice (LL#03). It is in a letter addressed to the tenant. The letter includes the tenant's name, rental address and cites the reason for termination as Section 19 of the *Residential Tenancies Act, 2018*. The notice is signed and dated for 18-March-2022, with a termination date of 30-April-2022.

17. The landlord said that they sent the notice by pre-paid registered mail and provided the tracking information into evidence (LL#03). The tracking by Canada Post shows that the item was picked up on 18-March-2022.

Analysis

18. 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.

.....

19. The tenant was in rent arrears 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 with the Act.
20. The tenant should have vacated the property by 30-April-2022.

Decision

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

22. The tenant shall vacate the premises immediately.
23. 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.
24. The tenant shall pay a daily rate for rent beginning 24-June-2022 of \$18.71, as per paragraph 10, until such time as the landlords regain possession of the property.

Issue 3: Hearing expenses reimbursed \$20.00

25. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.


Summary of Decision

26. The tenant shall:
 - Pay the landlord \$4,735.01 as follows:
 - Rent \$4,715.01
 - Hearing expenses 20.00
 - Total \$4,735.01
 - Pay a daily rate of rent beginning 24-June-2022 of \$18.71, until such time as the landlords regain 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.

July 4, 2022
Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office