

Residential Tenancies Tribunal

Application 2022-No.0542-NL

Decision 22-0542-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:37 p.m. on 12-September-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” attended by teleconference.
4. The respondent’s son, [REDACTED], hereinafter referred to as “the witness” attended by teleconference.

Preliminary Matters

5. The landlord submitted an affidavit for a previous hearing date (LL#01). All parties attended the last hearing and it was rescheduled for today’s date.
6. The landlord amended the application to increase rent from \$3,761.00 to \$4,134.00 to reflect the current amount owed.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent \$4,134.00
 - Vacant possession of rental premises
 - Hearing Expenses \$20.00

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 is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

Issue 1: Rent \$4,134.00

Landlord's Position

10. The landlord submitted a lease agreement (LL#02) with the application. They entered a written monthly agreement with the tenant on 07-April-2014, the last time the agreement was renewed was 01-June-2019. The tenant pays \$581.00 a month for a combined household. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month.

11. Section 4 of the tenant's lease agreement states: "Provided however that should the number of occupants of the Leased Premises increase beyond the persons specified in Clause 10(a) of this Lease, the landlord may review, and the Tenant shall provide, all necessary supporting information verifying the household composition and the total household income from all sources of all occupants, whereupon the Landlord may increase the rent ..." The landlord said that the tenant's son lives with him in the house and that the son's income has impacted the cost of the rent.

12. The landlord submitted a copy of the tenant's son's EI statement (LL#04) and the rent ledger (LL#05). The rent ledger's opening balance in September 2021 is 0.00. Beginning September 2021 rent increases to \$581.00 from \$263.00 based on the tenant's son's income. The additional \$318.00 per month has been accumulating since that time. Please see the ledger below:

Date	Action	Amount	total
	opening balance	0.00	0.00
1-Sep-21	Rent due	581.00	581.00
1-Sep-21	income support payment	-131.50	449.50
1-Sep-21	income support payment	-131.50	318.00
1-Oct-21	Rent due	581.00	899.00
1-Oct-21	income support payment	-131.50	767.50
1-Oct-21	income support payment	-131.50	636.00
1-Nov-21	Rent due	581.00	1217.00
2-Nov-21	income support payment	-131.50	1085.50
2-Nov-21	income support payment	-131.50	954.00
1-Dec-21	Rent due	581.00	1535.00
1-Dec-21	income support payment	-131.50	1403.50
1-Dec-21	income support payment	-131.50	1272.00
1-Jan-22	Rent due	581.00	1853.00
4-Jan-22	income support payment	-131.50	1721.50
4-Jan-22	income support payment	-131.50	1590.00
1-Feb-22	Rent due	581.00	2171.00

1-Feb-22	income support payment	-131.50	2039.50
1-Feb-22	income support payment	-131.50	1908.00
1-Mar-22	Rent due	581.00	2489.00
15-Mar-22	income support payment	-131.50	2357.50
23-Mar-22	income support payment	-131.50	2226.00
1-Apr-22	Rent due	581.00	2807.00
1-Apr-22	income support payment	-131.50	2675.50
1-Apr-22	income support payment	-131.50	2544.00
1-May-22	Rent due	581.00	3125.00
2-May-22	income support payment	-131.50	2993.50
2-May-22	income support payment	-131.50	2862.00
1-Jun-22	Rent due	581.00	3443.00
1-Jun-22	income support payment	-131.50	3311.50
1-Jun-22	income support payment	-131.50	3180.00
1-Jul-22	Rent due	581.00	3761.00
4-Jul-22	income support payment	-131.50	3629.50
4-Jul-22	income support payment	-131.50	3498.00
1-Aug-22	Rent due	581.00	4079.00
1-Aug-22	income support payment	-131.50	3947.50
1-Aug-22	income support payment	-131.50	3816.00
1-Sep-22	daily rate of \$19.10 x 12 days	229.20	4045.20
1-Sep-22	income support payment	-131.50	3913.70
1-Sep-22	income support payment	-131.50	3782.20

Daily rate \$581.00 x 12 months = \$6,972.00

\$6,972.00 a year divided by 365 days = \$19.10

\$19.10 a day x 12 days = \$229.20

13. The landlord is seeking full compensation for rent owed.

Tenant's Position

14. The tenant's son, the witness, disputes that he has income and states he is not working.

15. The landlord said he is unable to pay this additional rent.

Analysis

16. Non-payment of rent is a violation of the lease agreement (LL#02). Although the rent increase is from the tenant's son's income, payment of rent is the responsibility of the tenant and he is therefore responsible to ensure that this money is paid. I accept the landlord's testimony and evidence that the tenant did not pay rent \$3,782.20.

17. The tenant shall pay the landlord the rent owed totaling \$3,782.20.

Decision

18. The landlord's claim for rent succeeds in the amount of \$3,782.20.

Issue 2: Vacant Possession of the Rental Premises

Landlord's Position

19. The landlord submitted a termination notice (LL#06). The notice is in letter form it identifies the tenant, the rental premises and the Section under which it is sent. The notice is signed and dated for 04-February-2022 with a termination date of 25-February-2022.
20. The landlord said that the notice was sent via prepaid registered mail on the 05-February-2022 and was picked up by the tenant on 09-February-2022.

Tenant's Position

21. The tenant exited the conference.

Analysis

22. 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.

.....

23. 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 of the Act.
24. The tenant should have vacated the property by 25-February-2022.

Decision

25. The landlord's claim for an order for vacant possession succeeds.
26. The tenant shall vacate the premises immediately.
27. 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.
28. The tenant shall pay a daily rate for rent beginning 13-September-2022 of \$19.10, as per paragraph 12, until such time as the landlord regains possession of the property.

Issue 3: Hearing expenses reimbursed \$20.00

29. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#07) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

30. The tenant shall:
 - Pay the landlord \$3,802.20 as follows:
 - Rent \$3,782.20.
 - Hearing expenses 20.00
 - Total \$3,802.20
 - Pay a daily rate of rent beginning 13-September-2022 of \$19.10, 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.

September 16, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office