

Residential Tenancies Tribunal

Application 2022-No.670 -NL

Decision 22-0670-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 20-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.

Preliminary Matters

4. The landlord submitted an affidavit stating he served the tenant with notification of today's hearing on 17-August-2022 electronically. The tenant confirmed this service.
5. The landlord amended his application to decrease rent owed from \$6,356.00 to \$5,198.51. The landlord also requested that security deposit applied to amount owed, be added to the application.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$5,198.51
 - Security deposit applied against monies owed \$700.00
 - 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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$5,198.51

Landlord's Position

9. The landlord stated that he and the tenant along with another tenant initially had a term agreement from 01-April-2017 – 31-March-2018, after this time period the agreement was monthly. The landlord stated that he didn't think the other tenant ever lived at the house. The landlord said that he is trying to sell the house and that last year in April 2021, he told the tenant that the agreement would now be weekly.

10. The landlord said that the tenant pays \$1,300.00 a month, this payment is for the first day of the month until the last and rent is due on the 1st day of each month. He said he has accepted that the tenant makes the rent payment outside of this schedule. The landlord said that the tenant paid a security deposit of \$700.00 in March 2017; he is still in possession of that deposit.

11. The landlord submitted a rent ledger (LL#02). The landlord had documented a \$75.00 payment made in October 2017 a year later in 2018, he requested that the payment be moved to the correct line in October 2017. The ledger begins in November 2017, therefore this amount is not included.

12. The landlord acknowledges that the tenant disputes the amount owed as of 01-November-2017. He believes that the ledger is correct, but based on the evidence provided by the tenant (TT#01) the landlord will concede to start the ledger on 01-November-2017 with a zero balance. The ledger is as follows:

Rent ledger
File # 2022-0670-00

Date	Action	Amount	Total
Nov-17	Rent	1300.00	1300.00
	Misc Payment	-1003.74	296.26
Dec-17	Rent	1300.00	1596.26
Dec-17	Paid Cash Confirmed by email	-640.00	956.26
	Misc Payment	-1252.30	-296.04
Jan-18	Rent	1300.00	1003.96
	Misc Payment	-1252.30	-248.34
Feb-18	Rent	1300.00	1051.66
	Misc Payment	-1252.30	-200.64
Mar-18	Rent	1300.00	1099.36
Apr-18	Rent	1300.00	2399.36
	Misc Payment	-1252.30	1147.06

	Misc Payment	-1252.30	-105.24
May-18	Rent	1300.00	1194.76
	Misc Payment	-1252.30	-57.54
Jun-18	Rent	1300.00	1242.46
	Misc Payment	-1252.30	-9.84
Jul-18	Rent	1300.00	1290.16
	Misc Payment	-1252.30	37.86
Aug-18	Rent	1300.00	1337.86
	Misc Payment	-455.00	882.86
Sep-18	Rent	1300.00	2182.86
	e-Transfer received	-390.00	1792.86
	Misc Payment	-455.00	1337.86
	Misc Payment	-910.00	427.86
Oct-18	Rent	1300.00	1727.86
	Misc Payment	-910.00	817.86
Nov-18	Rent	1300.00	2117.86
	e-Transfer received	-390.00	1727.86
	Misc Payment	-910.00	817.86
Dec-18	Rent	1300.00	2117.86
	Misc Payment	-910.00	1207.86
Jan-19	Rent	1300.00	2507.86
	Misc Payment	-910.00	1597.86
Feb-19	Rent	1300.00	2897.86
	e-Transfer received	-400.00	2497.86
	Misc Payment	-910.00	1587.86
Mar-19	Rent	1300.00	2887.86
	e-Transfer received	-400.00	2487.86
	Misc Payment	-910.00	1577.86
Apr-19	Rent	1300.00	2877.86
	e-Transfer received	-400.00	2477.86
	Misc Payment	-910.00	1567.86
May-19	Rent	1300.00	2867.86
	e-Transfer received	-400.00	2467.86
	Misc Payment	-910.00	1557.86
Jun-19	Rent	1300.00	2857.86
	e-Transfer received	-400.00	2457.86
	Misc Payment	-910.00	1547.86
Jul-19	Rent	1300.00	2847.86
	Misc Payment	-910.00	1937.86
	e-Transfer received	-400.00	1537.86
Aug-19	Rent	1300.00	2837.86
	e-Transfer received	-400.00	2437.86
	Misc Payment	-910.00	1527.86

Sep-19	Rent	1300.00	2827.86
	e-Transfer received	-400.00	2427.86
	Misc Payment	-910.00	1517.86
Oct-19	Rent	1300.00	2817.86
	Misc Payment	-910.00	1907.86
Nov-19	Rent	1300.00	3207.86
	e-Transfer received	-400.00	2807.86
	Misc Payment	-1117.36	1690.50
Dec-19	Rent	1300.00	2990.50
	Misc Payment	-1324.72	1665.78
Jan-20	Rent	1300.00	2965.78
	Misc Payment	-1324.72	1641.06
Feb-20	Rent	1300.00	2941.06
	Misc Payment	-1324.72	1616.34
Mar-20	Rent	1300.00	2916.34
	Misc Payment	-945.00	1971.34
Apr-20	Rent	1300.00	3271.34
	Misc Payment	-945.00	2326.34
May-20	Rent	1300.00	3626.34
	e-Transfer received	-400.00	3226.34
	Misc Payment	-945.00	2281.34
Jun-20	Rent	1300.00	3581.34
	e-Transfer received	-400.00	3181.34
	Misc Payment	-945.00	2236.34
Jul-20	Rent	1300.00	3536.34
	e-Transfer received	-200.00	3336.34
	Misc Payment	-945.00	2391.34
Aug-20	Rent	1300.00	3691.34
	e-Transfer received	-400.00	3291.34
	Misc Payment	-945.00	2346.34
Sep-20	Rent	1300.00	3646.34
	Misc Payment	-945.00	2701.34
Oct-20	Rent	1300.00	4001.34
	e-Transfer received	-200.00	3801.34
	e-Transfer received	-400.00	3401.34
	Misc Payment	-945.00	2456.34
Nov-20	Rent	1300.00	3756.34
	e-Transfer received	-400.00	3356.34
	Misc Payment	-945.00	2411.34
Dec-20	Rent	1300.00	3711.34
	Misc Payment	-945.00	2766.34
Jan-21	Rent	1300.00	4066.34
	e-Transfer received	-400.00	3666.34

	Misc Payment	-945.00	2721.34
Feb-21	Rent	1300.00	4021.34
	e-Transfer - Autodeposit	-400.00	3621.34
	Misc Payment	-945.00	2676.34
Mar-21	Rent	1300.00	3976.34
	e-Transfer - Autodeposit	-400.00	3576.34
	Misc Payment	-945.00	2631.34
Apr-21	Rent	1300.00	3931.34
	e-Transfer - Autodeposit	-400.00	3531.34
	Misc Payment	-945.00	2586.34
May-21	Rent	1300.00	3886.34
	Misc Payment	-945.00	2941.34
Jun-21	Rent	1300.00	4241.34
	e-Transfer received	-300.00	3941.34
	Misc Payment	-945.00	2996.34
Jul-21	Rent	1300.00	4296.34
	e-Transfer received	-300.00	3996.34
	e-Transfer - Autodeposit	-400.00	3596.34
	Misc Payment	-1322.39	2273.95
Aug-21	Rent	1300.00	3573.95
	Misc Payment	-1322.39	2251.56
Sep-21	Rent	1300.00	3551.56
	Misc Payment	-1252.30	2299.26
Oct-21	Rent	1300.00	3599.26
	Misc Payment	-1252.30	2346.96
Nov-21	Rent	1300.00	3646.96
	e-Transfer - Autodeposit	-100.00	3546.96
	Misc Payment	-1252.30	2294.66
Dec-21	Rent	1300.00	3594.66
	Misc Payment	-1252.30	2342.36
Jan-22	Rent	1300.00	3642.36
	Misc Payment	-1252.30	2390.06
Feb-22	Rent	1300.00	3690.06
	Misc Payment	-1252.30	2437.76
Mar-22	Rent	1300.00	3737.76
	Misc Payment	-1252.30	2485.46
Apr-22	Rent	1300.00	3785.46
	Misc Payment	-1252.30	2533.16
May-22	Rent	1300.00	3833.16
	Misc Payment	-1252.30	2580.86
Jun-22	Rent	1300.00	3880.86
	Misc Payment	-1252.30	2628.56
Jul-22	Rent	1300.00	3928.56

	Misc Payment	-1302.60	2625.96
Aug-22	Rent	1300.00	3925.96
Sep-22	daily rate 20 days x \$42.74 = 854.80	854.80	4780.76
Sep-22	Misc Payment	-1252.30	3528.46

Daily rate 1300 x 12 months = \$15,600.00
\$15,600.00 divided by 365 days = \$42.74 a day

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

Tenant's Position

14. The tenant stated that when she first lived in the house that the other tenant did live there. She doesn't agree that the agreement is weekly. She said that the landlord did tell her he was trying to sell the house, but he never told her that the rental agreement had switched to a weekly agreement, she was under the understanding that the agreement is monthly.
15. The tenant submitted into evidence (TT#01) an interact receipt, provided to her parents after they made payments on her rent in October 2017. The receipt acknowledges that the landlord accepted the payment and he responds that the tenant is paid in full, up to 01-November-2017.
16. The tenant said that when the payments from Income Support would change she wasn't aware of the changes and didn't know that she was in arrears.

Analysis

17. The landlord's rent ledger is amended to show a daily rate of rent, in September, up to and including the date of the hearing. This board does not consider future monies owed.
18. 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 totaling \$3,528.46.
19. The tenant shall pay the landlord the rent owed totaling \$3,528.46.

Decision

20. The landlord's claim for rent succeeds in the amount of \$3,528.46.

Issue 2: Security deposit applied against monies owed \$700.00

Landlord's Position

21. The landlord stated in paragraph 10 that the tenant paid a security deposit of \$700.00 in March 2017 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

22. The landlord's claim for losses has been successful, paragraph 20, 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

23. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$700.00.

Issue 3: Vacant Possession of the Rental Premises

Landlord's Position

24. The landlord submitted two termination notices, the first notice (LL#03) is on a "landlord's notice to terminate – standard" form. The landlord signed and dated the notice for 05-May-2022 with a termination date of 06-August-2022. The landlord said he served this to the tenant by both email and text on 05-May-2022.
25. The landlord said that because he was in the process of selling the house, he had told the tenant that the rental agreement was to be weekly beginning April of 2021 (paragraph 9). He points out that although he is only required to give the tenant 4 weeks' notice, he gives her three months because she is a single parent and he wanted her to have time to find a place.
26. The landlord also served another notice (LL#04) to the tenant; it is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 11-August-2022, with a termination date of 22-August-2022.

27. The landlord said that he also served this notice to the tenant by both text and email on 11-August-2022. He said that the tenant is still living there and that he is requesting a possession order.

Tenant's Position

28. The tenant questions the validity of the Section 18 termination notice. She said that they were never in a weekly agreement and that the landlord only started talking about being in a weekly agreement after he served this notice and she questioned the weekly agreement.

29. The tenant stated she wasn't aware of the money she owed. She said when income support was changing the amounts that they were paying, she wasn't aware of the change in payments.

Analysis

30. The first notice was served under Section 18, of the *Residential Tenancies Act, 2018*, which states:

31. According to Section 18 of the *Residential Tenancies Act, 2018*:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(a) *not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*

(b) *not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*

(c) *not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

.....

(9) *In addition to the requirements under section 34, a notice under this section shall*

(a) *be signed by the person providing the notice;*

(b) *be given not later than the first day of a rental period;*

(c) *state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*

(d) *be served in accordance with section 35.*

32. I find that the landlord did not submit adequate proof to support his argument that the rental agreement had switched to a weekly agreement. The tenant states that she was not informed of that change.
33. Initially they had entered into a term agreement, at the end of the year term, their agreement becomes a monthly agreement. The landlord stated that due to the potential sale of his property, he informed the tenant the agreement would have to be weekly. However, the rent payments continue to be monthly on the 1st day of each month and the payment term is from the 1st day of the month until the last (paragraph 10). I find that the testimony of both parties support a monthly rental agreement.
34. As I find that the landlord and tenant are in a monthly rental agreement, the Section 18 notice (LL#03) served to the tenant is not a valid notice because it is marked for the incorrect term.
35. The landlord also served a notice under Section 19, of the *Residential Tenancies Act, 2018*. The notice is signed and dated for 11-August-2022, with a termination date of 22-August-2022. The landlord served the tenant with the notice on 11-August-2022. Section 19 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.

.....

36. The tenant was in rent arrears since July 2018; for a period of four years, 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.

37. The tenant should have vacated the property by 22-August-2022.

Decision

38. The landlord's claim for an order for vacant possession succeeds.
39. The tenant shall vacate the premises immediately.
40. 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.
41. The tenant shall pay a daily rate for rent beginning 21-September-2022 of \$42.74, as per paragraph 12, until such time as the landlord regains possession of the property.

Summary of Decision

42. The tenant shall:
 - Pay the landlord \$2,828.46 as follows:
 - Rent \$3,528.46
 - Security deposit applied (700.00)
 - Total \$2,828.46
 - Pay a daily rate of rent beginning 21-September-2022 of \$42.74, 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.
- Shall retain the security deposit of \$700.00.

September 23, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office