

Residential Tenancies Tribunal

Application 2022-No.0799 -NL
2022-No.0858-NL

Decision 22-0799-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:06 a.m. on 24-October-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
4. The tenant completed an authorized representative form (TT#01) and [REDACTED] attended with the tenant.
5. [REDACTED], was also represented by [REDACTED].

Preliminary Matters

6. The tenant stated that he served the landlord with notification of today’s hearing electronically by email, the landlord confirmed that they received notification on 27-September-2022. The landlord provided an affidavit (LL#01) stating that she served the tenant with notification of today’s hearing electronically on 23-September-2022; the tenant confirmed receipt of notification as stated.
7. The landlord amended their application to increase rent from \$4,260.00 to \$4,920.00 to reflect the current amount of rent due.

Issues before the Tribunal

8. The tenant is seeking:
 - Validity of termination
 - Other/interference with peaceful enjoyment
 - Hearing Expenses \$20.00

The landlord is seeking:

- Rent \$4,920.00
- Security deposit applied against monies owed \$300.00

- Vacant possession of rental premises
- Hearing Expenses \$20.00

Legislation and Policy

- The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
- 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 \$4,920.00

Landlord's Position

- The landlord submitted a rental agreement (LL#02) with the application. They entered a written monthly agreement with the tenant beginning 01-August-2021. The tenant pays \$660.00 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 \$300.00 on 30-July -2021 and they are still in possession of the deposit.
- The landlord submitted a rent ledger, see below:

Rent ledger
2022-0799-NL & 2022-0858-NL

Date	Action	Amount	total
1-Jan-22	rent due	660.00	660.00
14-Jan-22	payment	-300.00	360.00
1-Feb-22	rent due	660.00	1020.00
1-Mar-22	rent due	660.00	1680.00
1-Apr-22	rent due	660.00	2340.00
6-Apr-22	payment	-600.00	1740.00
1-May-22	rent due	660.00	2400.00
5-May-22	payment	-780.00	1620.00
1-Jun-22	rent due	660.00	2280.00
1-Jul-22	rent due	660.00	2940.00
1-Aug-22	rent due	660.00	3600.00
1-Sep-22	rent due	660.00	4260.00
1-Oct-22	daily rate rent due 01-24 Oct	520.80	4780.80

Daily rate \$660 x 12 months = \$7,920
 \$7,920.00 a year divided by 365 days = \$21.70 a day
 \$21.70 x 24 days = \$520.80

- As this board doesn't consider future rent a daily rate was calculated for the month of October, up to and including the day of the hearing.

14. The landlord is seeking full payment of rent owed.

Tenant's Position

15. The tenant agrees with the rent owed as stated by the landlord.

Analysis

16. Non-payment of rent is a violation of the rental agreement (LL#02). As the landlord and tenant agree to the amount owed I accept that the tenant did not pay rent totaling \$4,780.80.
17. The tenant shall pay the landlord the rent owed totaling \$4,780.80.

Decision

18. The landlord's claim for rent succeeds in the amount of \$4,780.80.

Issue 2: Security deposit applied against monies owed \$300.00

Relevant Submissions

19. The landlord stated in paragraph 11 that the tenant paid a security deposit of \$300.00 on 30-July-2021 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

20. The landlord's claim for loss has been successful, paragraph 18, and they 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

21. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$300.00.

Issue 3: Vacant Possession of the Rental Premises

Landlord's Position

22. 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 24-August-2022, with a termination date of 05-September-2022.
23. The landlord said that they served the tenant electronically, to the email provided to them by the tenant, on 24-August-2022 at 9:43 a.m.

Tenant's Position

24. The tenant confirms receiving the notification as stated.

Analysis

25. 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.

.....

26. 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*.
27. The tenant should have vacated the property by 05-September-2022.

Decision

28. The landlord's claim for an order for vacant possession succeeds.
29. The tenant shall vacate the premises immediately.
30. 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.
31. The tenant shall pay a daily rate for rent beginning 25-October-2022 of \$21.70, as per paragraph 12, until such time as the landlords regain possession of the property.

Issue 4: Validity of termination notice

Tenant's Position

32. The tenant is questioning the validity of the termination notice. The tenant had a number of complaints about the condition of the property and the slow response of the landlord when issues have arisen.

Analysis

33. As shown in paragraph 26 the notice served to the tenant meets the requirements of the *Act*.

Decision

34. The termination notice is valid.

Issue 5: Other/Interference with peaceful enjoyment

Tenant's Position

35. The tenant has a number of issues around the experience of living at the residential premises.

Decision

36. The tenant has been directed to notify the landlord of issues in accordance with the *Residential Tenancies Act, 2018*.

Issue 6: Hearing expenses reimbursed \$20.00

37. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and the tenant also submitted the receipt for \$20.00 for the cost of the hearing (TT#02). Pursuant to policy 12.01, as the landlord's claim has been successful, they are entitled to reimbursement of that cost from the tenant.

Summary of Decision

38. The tenant shall:


- Pay the landlord \$4,500.00 as follows:
 - Rent \$4,780.80
 - Hearing expenses 20.00
 - Security deposit applied (300.00)
 - Total \$4,500.00
- Pay a daily rate of rent beginning 25-October-2022 of \$21.70, 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 \$300.00.

October 31, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office