

## **Residential Tenancies Tribunal**

Application 2022-No.1048 -NL      Decision 22-1048-00

Jacqueline Williams  
Adjudicator

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### **Introduction**

1. Hearing was called at 9:11 a.m. on 19-January-2023.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1 and tenant2" attended by teleconference.

### **Preliminary Matters**

4. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenants with notice of the hearing, electronically on 05-January-2023 to their phone number. Tenant1 confirmed receipt of notification as stated.
5. The landlord amended his application to increase rent from \$20,270.00 to \$21,570.00 to reflect the current amount of rent due.

### **Issues before the Tribunal**

6. The landlord is seeking:
  - Rent \$21,570.00
  - 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 is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

**Issue 1: Rent \$21,570.00**Landlord's position

9. The landlord stated he had a written rental agreement with the tenant as follows: The tenants moved in 01-April-2017 and they have in a monthly agreement. The tenants pay \$1,300.00 a month. The rental period is from the 1<sup>st</sup> day of the month until the last day; rent is due the 1<sup>st</sup> day of each month. The landlord said that the tenant paid a security deposit of \$650.00 on 23-March-2017 and he still in possession of the deposit.

10. The landlord stated for the purpose of the hearing he reviewed his bank statements and submitted a rent ledger (LL#02) as follows:

Date	Action	Amount	total
1-Jan-21	rent due	1300.00	1300.00
1-Jan-21	payment	-300.00	1000.00
1-Feb-21	rent due	1300.00	2300.00
1-Mar-21	rent due	1300.00	3600.00
1-Mar-21	payment	-1300.00	2300.00
1-Apr-21	rent due	1300.00	3600.00
1-Apr-21	payment	-1050.00	2550.00
1-May-21	rent due	1300.00	3850.00
1-May-21	payment	-400.00	3450.00
1-Jun-21	rent due	1300.00	4750.00
1-Jun-21	payment	-300.00	4450.00
1-Jul-21	rent due	1300.00	5750.00
1-Jul-21	payment	-380.00	5370.00
1-Aug-21	rent due	1300.00	6670.00
1-Sep-21	rent due	1300.00	7970.00
1-Sep-21	payment	-800.00	7170.00
1-Oct-21	rent due	1300.00	8470.00
1-Nov-21	rent due	1300.00	9770.00
1-Dec-21	rent due	1300.00	11070.00
1-Jan-22	rent due	1300.00	12370.00
1-Jan-22	payment	-3000.00	9370.00
1-Feb-22	rent due	1300.00	10670.00
1-Feb-22	payment	-900.00	9770.00
1-Mar-22	rent due	1300.00	11070.00
1-Apr-22	rent due	1300.00	12370.00
1-May-22	rent due	1300.00	13670.00
1-Jun-22	rent due	1300.00	14970.00
1-Jul-22	rent due	1300.00	16270.00
1-Aug-22	rent due	1300.00	17570.00

1-Aug-22		payment	-1600.00	15970.00
1-Sep-22	rent due		1300.00	17270.00
1-Sep-22		cash payment	-900.00	16370.00
1-Oct-22	rent due		1300.00	17670.00
1-Nov-22	rent due		1300.00	18970.00
1-Dec-22	rent due		1300.00	20270.00
1-Jan-22	daily rate rent due		812.06	21082.06

Daily rate 1,300 x 12 months = \$15,600.00

\$15,600.00 divided by 365 days = \$42.74 a day

\$42.74 a day x 19 days = \$812.06

11. The rent ledger has been amended to include a daily rate of rent for the month of January up to and including the day of the hearing.
12. The landlord accepts the tenants' belief that they paid \$2,550.00 cash in addition to the payments listed. He acknowledges that he was waiting for the tenants to receive their settlement but has a mortgage to pay on the house and he can't continue to wait for that settlement to come through.

#### Tenants' position

13. Tenant1 confirms the details of the rental agreement but disputes that the agreement was written and states it was verbal.
14. Tenant1 said that he has an upcoming hearing and that he is expecting a cash settlement. Tenant1 declared that the landlord is aware that some months he would not have money and he has assured the landlord that he will receive any rent owed at that time.
15. Tenant1 said that they checked their records and believe that they made cash payments as follows: 01-September-21 \$250.00, 01-Jul-22 \$1,600.00 + \$400.00 +, 01-Sep-22 \$300.00. They do not have receipts for these payments.

#### **Analysis**

16. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenants did not pay rent. As the landlord does not dispute the tenants' belief that they paid \$2,550.00, these payments have been added to the rent ledger as follows:

Date	Action	Amount	total
1-Jan-21	rent due	1300.00	1300.00
1-Jan-21		payment	-300.00
1-Feb-21	rent due	1300.00	2300.00

1-Mar-21	rent due	1300.00	3600.00
1-Mar-21	payment	-1300.00	2300.00
1-Apr-21	rent due	1300.00	3600.00
1-Apr-21	payment	-1050.00	2550.00
1-May-21	rent due	1300.00	3850.00
1-May-21	payment	-400.00	3450.00
1-Jun-21	rent due	1300.00	4750.00
1-Jun-21	payment	-300.00	4450.00
1-Jul-21	rent due	1300.00	5750.00
1-Jul-21	payment	-380.00	5370.00
1-Jul-21	cash payment	-250.00	5120.00
1-Aug-21	rent due	1300.00	6420.00
1-Sep-21	rent due	1300.00	7720.00
1-Sep-21	payment	-800.00	6920.00
1-Oct-21	rent due	1300.00	8220.00
1-Nov-21	rent due	1300.00	9520.00
1-Dec-21	rent due	1300.00	10820.00
1-Jan-22	rent due	1300.00	12120.00
1-Jan-22	payment	-3000.00	9120.00
1-Feb-22	rent due	1300.00	10420.00
1-Feb-22	payment	-900.00	9520.00
1-Mar-22	rent due	1300.00	10820.00
1-Apr-22	rent due	1300.00	12120.00
1-May-22	rent due	1300.00	13420.00
1-Jun-22	rent due	1300.00	14720.00
1-Jul-22	rent due	1300.00	16020.00
1-Jul-22	cash payment	-1600.00	14420.00
1-Jul-22	cash payment	-400.00	14020.00
1-Aug-22	rent due	1300.00	15320.00
1-Aug-22	payment	-1600.00	13720.00
1-Sep-22	rent due	1300.00	15020.00
1-Sep-22	cash payment	-900.00	14120.00
1-Sep-22	cash payment	-300.00	13820.00
1-Oct-22	rent due	1300.00	15120.00
1-Nov-22	rent due	1300.00	16420.00
1-Dec-22	rent due	1300.00	17720.00
1-Jan-22	daily rate rent due	812.06	18532.06

Daily rate 1,300 x 12 months = \$15,600.00  
 \$15,600.00 divided by 365 days = \$42.74 a day  
 \$42.74 a day x 19 days = \$812.06

17. There is no dispute both parties agree that rent is owed. The tenants shall pay the landlord the rent owed totaling \$18,532.06.

## Decision

18. The landlord's claim for rent succeeds in the amount of \$18,532.06.

## **Issue 2: Vacant Possession of the Rental Premises**

### Landlord's Position

19. The landlord submitted a termination notice (LL#03). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 29-November-2022, with a termination date of 10-December-2022.
20. The landlord said that he personally delivered the notice to the tenants on 29-November-2022 after he filled out the form.

### Tenants' Position

21. Tenant1 said that he believes that the landlord delivered the notice on 01-December-2022 because he said that the landlord was looking for rent to be paid and had told him at that time if they paid \$9,000.00 towards their rent then he would not enforce the termination notice.
22. Tenant1 believes it isn't right that the landlord should allow him to build up this much rent owing and then kick him out just months before his settlement.

## **Analysis**

23. 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.*

.....

24. I accept the date of service as stated by the landlord. I believe that the two parties did speak about rent at that time the notice was given; as stated by the tenant. However I don't agree that this means it would have occurred on 01-December-2022. The tenants were behind their rent for a long period of time and it is within reason that any time they spoke, rent may have been part of the conversation.
25. The tenants were 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.
26. The tenants should have vacated the property by 10-December-2022.

### **Decision**

27. The landlord's claim for an order for vacant possession succeeds.
28. The tenants shall vacate the premises immediately.
29. The tenants shall pay to the landlord 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.
30. The tenants shall pay a daily rate for rent beginning 20-January-2023 of \$42.74, as per the table in paragraph 10, until such time as the landlords regain possession of the property.

### **Summary of Decision**

31. The tenants shall:
  - Pay the landlord rent in the amount of \$18,532.06.
  - Pay a daily rate of rent beginning 20-January-2023 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.

January 24, 2023

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office