

Residential Tenancies Tribunal

Application 2023-0004 -NL

Decision 23-0004-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 02-February-2023.
2. The applicant, [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 ([REDACTED]) 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 his application stating that he had served the tenant with notice of the hearing, personally on 13-January-2023. 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 as follows:
 - Increase rent owed from \$2,100.00 to \$4,900.00 to reflect the current amount of rent due.
 - Removed “possessions returned” from the application as the tenant has not moved from the rental at this time.
 - Added security deposit of \$1,000.00 to be applied to monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$4,900.00

- Security deposit applied against monies owed \$300.00
- 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, Section 19: Notice where failure to pay rent.

Issue 1: Rent \$4,900.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. He said that the tenant moved in on 01-March-2022 with another roommate. The roommate left and then the landlord and tenant entered a written term agreement beginning 01-April-2022 and ending 28-March-2023. The tenant pays \$1,400.00 a month for rent. 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 \$1,000.00 on 21-February-2022 and he is still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#03) in his ledger he did not record the date of payments, he instead marked the ledger to show when each month was paid in full as follows:

Rent ledger
2023-0004-NL

Date	Action	Amount	total
1-Mar-22	Rent due	1400.00	1400.00
1-Mar-22	month's rent paid in full	-1400.00	0.00
1-Apr-22	Rent due	1400.00	1400.00
1-Apr-22	month's rent paid in full	-1400.00	0.00
1-May-22	Rent due	1400.00	1400.00
1-May-22	month's rent paid in full	-1400.00	0.00
1-Jun-22	Rent due	1400.00	1400.00
1-Jun-22	month's rent paid in full	-1400.00	0.00
1-Jul-22	Rent due	1400.00	1400.00
1-Jul-22	month's rent paid in full	-1400.00	0.00
1-Aug-22	Rent due	1400.00	1400.00
1-Aug-22	month's rent paid in full	-1400.00	0.00
1-Sep-22	Rent due	1400.00	1400.00
1-Sep-22	month's rent paid in full	-1400.00	0.00

1-Oct-22	Rent due	1400.00	1400.00
1-Oct-22	month's rent paid in full	-1400.00	0.00
31-Oct-22	payment	-700.00	-700.00
1-Nov-22	Rent due	1400.00	700.00
1-Dec-22	Rent due	1400.00	2100.00
1-Jan-23	Rent due	1400.00	3500.00
1-Feb-23	daily rate for Feb 01 - 02	92.06	3592.06

Daily rate: $\$1,400 \times 12 \text{ months} = \$16,800.00$

$\$16,800 \text{ divided by } 365 \text{ days} = \46.03

$\$46.03 \times 2 = \92.06

11. The landlord stated that the last payment that was received was of \$700.00 on 31-October-2022.
12. As future rent cannot be considered, a daily rate was included for the month of February up to and including the date of the hearing.

Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$3,592.06.
14. The tenant shall pay the landlord the rent owed totaling \$3,592.06.

Decision

15. The landlord's claim for rent succeeds in the amount of \$3,592.06.

Issue 2: Security deposit applied against monies owed \$1,000.00

Relevant Submissions

16. The landlord stated in paragraph 09 that the tenant paid a security deposit of \$1000.00 on 21-February-2022 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

17. The landlord's claim for losses has been successful, paragraph 15, 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

18. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,000.00.

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

19. 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 28-November-2022, with a termination date of 14-December-2022.
20. The landlord said that he served notice of the termination of the rental agreement electronically to the email provided to him by the tenant. He said that the email was sent at 11:22 p.m. on 28-November-2022.

Analysis

21. 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.*

.....

22. In accordance with Section 35 of the *Act*, as the notice was served electronically after 4:00 p.m. it is considered served the next day, Tuesday 29-November-2022. Section 35 is as follows:

Service of documents

35. (2) *A notice or other document under this Act other than an application under section 42 shall be served by a landlord on a tenant by*

(a) *giving it personally to the tenant;*

(b) *giving it to a person 16 years of age or older who apparently lives with the tenant;*

(c) *posting it in a conspicuous place on the tenant's residential premises;*

(d) *placing it in the tenant's mailbox or under a door in the tenant's residential premises;*

(e) *sending it to the tenant by prepaid registered mail or prepaid express post at an address*

(i) *provided by the tenant, or*

(ii) *where the tenant carries on business;*

(f) ***sending it electronically where***

(i) ***it is provided in the same or substantially the same form as the written notice or document,***

(ii) ***the tenant has provided an electronic address for receipt of documents, and***

(iii) ***it is sent to that electronic address; or***

(g) *sending it to the tenant by courier service at an address set out in paragraph (e).*

(6) *For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.*

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 provides the tenant more than 10 clear days' notice, it 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 14-December-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 03-February of \$46.03, as per paragraph 10, until such time as the landlord regains possession of the property.

Summary of Decision


29. The tenant shall:
 - Pay the landlord \$2,592.06.as follows:
 - Rent \$3,592.06.
 - Security deposit applied ... (1,000.00)
 - Total..... \$2,592.06
 - Pay a daily rate of rent beginning 03-February of \$46.03, 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 \$1,000.00.

February 7, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office