

Residential Tenancies Tribunal

Application 2023-No.0094-NL

Decision 23-0094-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 22-February-2023..
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants" did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone ([REDACTED] or [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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlords submitted an affidavit (LL#01) with their application stating that they had served the tenants with notice of the hearing, electronically on 02-February-2023 to the tenants' emails ([REDACTED] and [REDACTED]). Landlord1 said that the tenants provided them the email addresses and they used it for communication. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
5. Landlord1 amended their application to increase rent from \$2,685.00 to \$2,960.00 to reflect the current amount of rent due. They also removed the damages claim, as the tenants are still living in the apartment and they will assess damages after they regain possession.

Issues before the Tribunal

6. The landlord is seeking:
- Rent \$2,960.00
 - Vacant possession of rental premises
 - Hearing Expenses \$20.00

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 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$2,960.00

Relevant Submissions

9. The landlords submitted a rental agreement (LL#02) with the application. The agreement was incomplete, however it reflects the agreement between the parties. They entered a written term agreement with the tenants from 01-August-2022 for a period of 10 years. The tenants moved in during July, however there was no charge for rent until 01-August-2022. Each tenant pays \$550.00 a month for a total of \$1,100.00. The rental period is from the 1st day of each month until the last day; rent is due the 1st day of each month. Landlord1 said that the tenants paid a security deposit of \$770.00 on 01-July-2022 and the landlords are still in possession of the deposit.
10. The landlords submitted a rent ledger (LL#03). Landlord1 made amendments to the ledger to include the recent months and reviewed their bank statements to ensure all paid rent was accounted for. The amended ledger is as follows:

Rent ledger
2023-0094-NL

Date	Action	Amount	total
1-Aug-22	Rent due	1100.00	1100.00
30-Jul-22	████ - payment	-250.00	850.00
1-Aug-22	████ - payment	-550.00	300.00
1-Aug-22	████ - payment	-300.00	0.00
1-Sep-22	Rent due	1100.00	1100.00
1-Sep-22	████ - payment	-550.00	550.00
2-Sep-22	████ - payment	-550.00	0.00

30-Sep-22		████ - payment	-350.00	-350.00
1-Oct-22	Rent due		1100.00	750.00
1-Oct-22		████ - payment	-665.00	85.00
1-Nov-22	Rent due		1100.00	1185.00
25-Nov-22		████ - payment	-260.00	925.00
1-Dec-22	Rent due		1100.00	2025.00
2-Dec-22		████ - payment	-200.00	1825.00
2-Dec-22		████ - payment	-200.00	1625.00
9-Dec-22		████ - payment	-300.00	1325.00
9-Dec-22		████ - payment	-210.00	1115.00
30-Dec-22		████ - payment	-160.00	955.00
31-Dec-22		████ - payment	-250.00	705.00
1-Jan-22	Rent due		1100.00	1805.00
13-Jan-22		████ - payment	-150.00	1655.00
1-Feb-22	Rent due daily rate 01-22 Feb		795.52	2450.52

Daily rate \$1,100 x 12 months = \$13,200

\$13,200 divided by 365 days = \$36.16

\$36.16 x 22 days = \$795.52

11. Note: ledger is amended to show a daily rate for February as this tribunal doesn't consider future rent.
12. The landlords are seeking full compensation for rent owed.

Analysis

13. Landlord1 stated that they entered into a 10 year agreement with the tenants, in accordance with Section 8 (c) of the *Residential Tenancies Act, 2018* a rental agreement of more than 12 months shall be considered to be rented for a period of 12 months.
14. 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 \$2,450.52.
15. The tenants split the cost of the rent in their payments to the landlords, however in a rental agreement they are individually and collectively responsible
16. The tenants shall pay the landlords the rent owed totaling \$2,450.52.

Decision

17. The landlords' claim for rent succeeds in the amount of \$2,450.52.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

18. The landlords 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 16-January-2023, with a termination date of 27-January-2023.
19. Landlord1 said that she posted the notice on the tenants’ door on 16-January-2023.

Analysis

20. 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.

21. The tenants were in rent arrears since 02-October-2022 which is in excess of the 5 days when the notice was served. On the date of termination, the tenants were still in arrears. The notice was served in accordance of the *Act*. The termination notice meets the requirements of the *Act* and is a valid notice.
22. The tenants should have vacated the property by 27-January-2023.

Decision

23. The landlords’ claim for an order for vacant possession succeeds.

24. The tenants shall vacate the premises immediately.
25. The tenants 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.
26. The tenants shall pay a daily rate for rent beginning 23-February-2023 of \$36.16, as per paragraph 10, until such time as the landlords regain possession of the property.

Issue 3: Hearing expenses reimbursed \$20.00

27. The landlords submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, as their claim has been successful, they are entitled to reimbursement of that cost from the tenants.

Summary of Decision


28. The tenants shall:
 - Pay the landlords \$2,470.52 as follows:
 - Rent \$2,450.52
 - Hearing Expenses 20.00
 - Total \$2470.52
 - Pay a daily rate of rent beginning 23-February-2023 of \$36.16, 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 landlords

- Will be awarded an Order of Possession.

February 27, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office