

Residential Tenancies Tribunal

Application 2023-No.0143 -NL

Decision 23-0143-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 22-March-2023.
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" 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 at the start of the hearing, as there was no number provided. 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 their application stating that they had served the tenant with notice of the hearing, electronically, personally and by pre-paid registered mail ([REDACTED]) on 21-February-2023. The registered mail tracking indicates that the tenant did not retrieve her mail. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent; additionally electronic and personal service is also adequate. 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 their application to increase rent from \$1,052.00 to \$1,315.00 to reflect the current amount of rent due. They also are seeking hearing expenses reimbursed.

Issues before the Tribunal

6. The landlord is seeking:
- Rent \$1,315.00
 - 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 19: Notice where failure to pay rent.

Issue 1: Rent \$1,315.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. They entered a written monthly agreement with the tenant beginning 27-May-2021. The tenant pays \$263.00 rent 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 did not pay a security deposit.
10. The landlord stated that the last rent payment received from the tenant's income support was in October. He submitted a rent ledger (LL#03) as follows:

Rent ledger
2023-0143-NL

Date	Action	Amount	total
1-Oct-22	rent due	263.00	263.00
3-Oct-22	payment	-131.50	131.50
3-Oct-22	payment	-131.50	0.00
1-Nov-22	rent due	263.00	263.00
1-Dec-22	rent due	263.00	526.00
1-Jan-23	rent due	263.00	789.00
1-Feb-23	rent due	263.00	1052.00
1-Mar-23	daily rate Mar 1 - 22	190.30	1242.30

Daily rate: $\$263 \times 12 \text{ months} = \$3,156 \text{ a year}$
 $\$3,156 \text{ divided by } 365 \text{ days} = \8.65 a day
 $22 \text{ days} \times \$8.65 = \190.30

11. Note: ledger is amended to show a daily rate for March as this tribunal doesn't consider future rent.

12. The landlord is seeking full reimbursement of rent owed.

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 \$1,242.30.
14. The tenant shall pay the landlord the rent owed totaling \$1,242.30.

Decision

15. The landlord's claim for rent succeeds in the amount of \$1,242.30.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

16. 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 12-January-2023, with a termination date of 28-February-2022.
17. The landlord submitted an affidavit stating that he had served the notice to the tenant on 13-January-2023, by posting it to the door and by prepaid registered mail ([REDACTED]); tracking indicates it was not delivered.

Analysis

18. 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.

.....

19. 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 tracking number for the notice indicates that it was not delivered to the tenant. As per the *Act*, as previously determined in paragraph 4, registered mail is considered served 5 days after it is sent. Additionally, the posting of the notice to the tenant's door is also good service.
20. The tenant should have vacated the property by 28-February-2023.

Decision

21. The landlord's claim for an order for vacant possession succeeds.
22. The tenant shall vacate the premises immediately.
23. 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.
24. The tenant shall pay a daily rate for rent beginning 23-March-2023 of \$8.65, as per paragraph 10, until such time as the landlords regain possession of the property.

Issue 3: Hearing expenses reimbursed \$20.00

25. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

26. The tenant shall:

- Pay the landlord \$3,942.04 as follows:
 - Rent \$1,242.30
 - Hearing expenses 20.00
 - Total \$1,262.30
- Pay a daily rate of rent beginning 23-March-2023 of \$8.65, 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.

March 27, 2023

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office