

Residential Tenancies Tribunal

Application 2023-0231-NL

Decision 23-0231-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:53 p.m. on 10-April-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “tenant 1” attended by teleconference. The respondent [REDACTED], hereinafter referred to as “tenant 2” did not attend.

Preliminary Matters

4. Tenant 2 was contacted by telephone and asked if she wanted to attend the hearing, she stated that she does not live there any longer. I advised that she is on the application and if she wanted to defend herself against the claim she could attend. I attempted to dial her into the hearing but she was not there. I did not attempt to call her again as she was served with the notice of hearing and she had the call in number if she wanted to join.
5. The landlord submitted 2 affidavits with her application stating that she had served both tenants with the notice of the hearing electronically and tenant 1 confirmed verbally that he had received the documents on 21-March-2023. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. The landlord amended the application to increase outstanding rent from \$750 as per application to \$1350.00. Tenant 1 agreed that this is the amount owing for rent. The landlord is also seeking hearing expenses reimbursed. The landlord amended part 2 of the application to change postal code to [REDACTED]

Issues before the Tribunal

7. The landlord is seeking:
 - Rent \$1350.00
 - Vacant possession of rental premises
 - Hearing expenses \$20.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. 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 \$1350.00

Relevant Submissions

The landlord submitted a written fixed agreement with the tenants commencing 01-September-2022. According to the agreement, the tenants agreed to pay \$1000.00 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. Tenant 1 confirmed that a security deposit of \$750.00 was paid in August 2022. The landlord states that there is a balance of \$1350.00 which includes partial rent for March and full rent for April, 2023. The landlord did not submit a written rental ledger.

Analysis

10. Non-payment of rent is a violation of the rental agreement. The landlord verbally stated that there is rental arrears in the amount of \$1350.00. Tenant 1 did not dispute the outstanding amount. A landlord's termination notice with cause was given to both tenants on 7-March-2023 to vacate on 18-March-2023. Tenant 1 confirmed receiving the termination notice on 7-March-2023 and the outstanding rent at that point was \$750.00. The landlord stated that the tenant paid \$400 on 20-March-2023 leaving a new balance of \$350.00. The tenant has not paid rent for the month of April to date, which brings the outstanding rent to \$1350.00. The tenant stated that he was unable to pay the rent due to the excessively high light bill that he pays for his unit and the unit attached where other tenants reside. I accept the landlord's testimony and evidence that the tenants did not pay rent on the dates owed as outlined in their rental agreement. I am unable to address the light bill issue as paying the light bill for an attached unit is not a condition of the rental agreement.
11. I find that the tenant is responsible for outstanding rent for the month of March in the amount of \$350.00 and rent from 1-April to 10-April in the amount of \$328.80 for a total of \$678.80 and then a daily rate shall apply as such:

Daily rate: $\$1000 \times 12 \text{ months} = \$12,000 \text{ a year}$
 $\$12,000 \text{ a year divided by } 365 \text{ days} = \32.88 a day
 $10 \text{ days} \times \$32.88 = \328.80

Decision

12. The landlord's claim for rental arrears succeeds

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

13. The landlord submitted a termination notice which is on a "Landlord's Notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 7-March-2023, with a termination date of 18-March-2023.

Analysis

14. 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.

15. The tenants were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 18-March-2023 the tenants were still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.
16. I find the tenant should have vacated the property by 18-March-2023.

Decision

17. The landlord's claim for an order for vacant possession succeeds.
18. The tenant shall vacate the premises immediately
19. The tenant 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.
20. As this tribunal does not consider future rent, the tenants shall pay a daily rate for rent beginning 11-April-2023 in the amount of \$32.88 a day as outlined in paragraph 11, until such time as the landlord regains possession of the property.

Issue 3: Hearing Expenses

21. The landlord paid a fee of \$20.00 to file the application. As the landlord's claim has been successful, the tenant shall pay the \$20.00 fee. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

22. The tenant shall:

- Pay the landlord \$698.80 as follows:
 - Rent \$678.80
 - Hearing expenses \$20.00

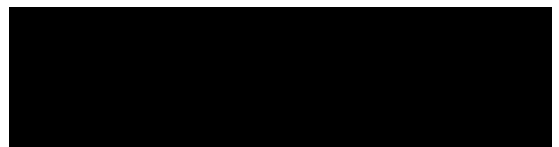
Total \$698.80

- Pay a daily rate of rent beginning 11-April-2023 of \$32.88, until such time as the landlord regains possession of the property.
- Vacate the property immediately
- 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.

The landlord

- Will be awarded an Order of Possession.

April 14, 2023
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office