

## Residential Tenancies Tribunal

Application 2023-0257-NL

Decision 23-0257-00

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 11:15 a.m. on 3-May-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” represented by [REDACTED] attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

### Preliminary Matters

4. The tenant did not call in and I was unable to attempt to reach him as the landlord did not have a phone number for him. I waited 15 minutes for him to call and then proceeded without him present.
5. The landlord submitted an affidavit (LL#1) with her application stating that the tenant was served personally with the Notice of Hearing at [REDACTED] on 3-April-2023. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. The landlord amended the application to increase outstanding rent from \$1407.50 as per application to \$2707.50 to include the months of April and May. The landlord is not seeking hearing expenses reimbursed.

### Issues before the Tribunal

7. The landlord is seeking:
  - a. Rent \$2707.50
  - b. Vacant possession of rental premises

## 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 \$2707.50

#### Relevant Submissions

10. The landlord submitted a written fixed agreement with the tenant commencing 01-November-2019 (LL#2). According to the landlord, the tenant agreed to pay \$650.00 a month. The landlord stated that a new lease was never signed and the tenancy switched from a fixed term to a month to month in November 2020. 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. A security deposit in the amount of \$487.50 was paid on 21-October-2019 and is in the possession of the landlord.
11. The landlord submitted a written rental ledger as follows:

Date	Ref	Transaction Name	Payee	Transaction Comments	Charges	Payments	Balance
10/25/2022	cash	Tenant Payment				(\$1,000.00)	(\$307.50)
11/1/2022		Rent Due			\$650.00		\$342.50
12/1/2022		Rent Due			\$650.00		\$992.50
12/7/2022	cash	Tenant Payment				(\$200.00)	\$792.50
12/14/2022		Letter - Eviction		Printed: 10 Day Eviction - Non Payment for			\$792.50
12/15/2022	cash	Tenant Payment				(\$200.00)	\$592.50
1/1/2023		Rent Due			\$650.00		\$1,242.50
1/3/2023	cash	Tenant Payment				(\$160.00)	\$1,082.50
1/4/2023	cash	Tenant Payment				(\$200.00)	\$882.50
1/23/2023		Letter - Eviction		Printed: 10 Day Eviction - Non Payment for			\$882.50
2/1/2023		Rent Due			\$650.00		\$1,532.50
2/6/2023	cash	Tenant Payment				(\$175.00)	\$1,357.50
2/7/2023	cash	Tenant Payment				(\$600.00)	\$757.50
3/1/2023		Rent Due			\$650.00		\$1,407.50
					\$27,372.50	(\$25,965.00)	\$1,407.50

#### Analysis

12. Non-payment of rent is a violation of the rental agreement. The landlord stated that there are rental arrears in the amount of \$2707.50 once outstanding rent for the months of April and May are added. A landlord's termination notice with cause was given to the tenant on 21-March-2023 under section 19; failure to pay rent with a termination date of 1-April-2023 (LL#3). The notice was delivered by a courier service and the landlord submitted the courier notice (LL#4). This is a good notice.
13. The rental ledger is amended to show a daily rate for May as this tribunal doesn't consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-November-2022 to 30-April-2023 in the amount of \$2057.50 and rent from 1-May to 3-May in the amount of \$64.11 for a total of \$2121.61 and then a daily rate shall apply as calculated below:

Date	Action	Amount	Total
Balance (26-Oct-2022)			307.50
November 1, 2022	Rent due	650.00	-342.50
December 1, 2022	Rent due	650.00	-992.50
December 7, 2022	Payment	200.00	-792.50
December 16, 2022	Payment	200.00	-592.50
January 1, 2023	Rent due	650.00	-1242.50
January 3, 2023	Payment	160.00	-1082.50
January 4, 2023	Payment	200.00	-882.50
February 1, 2023	Rent due	650.00	-1532.50
February 6, 2023	Payment	175.00	-1357.50
February 7, 2023	Payment	600.00	-757.50
March 1, 2023	Rent due	650.00	-1407.50
April 1, 2023	Rent due	650.00	-2057.50
May 1-3, 2023	Rent due	64.11	-2121.61

Daily rate: \$650 x 12 months = \$7800  
\$7800 divided by 365 days = \$21.37 a day  
3 days x \$21.37 = \$64.11

## Decision

14. The landlord's claim for rental arrears succeeds

## Issue 2: Vacant Possession of the Rental Premises

### Relevant Submissions

15. The landlord submitted an eviction notice on company letterhead quoting section 19 of The Act for failure to pay rent. The notice is signed and dated for 21-March-2023, with a termination date of 1-April-2023 (LL#3).

## Analysis

16. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which states:

*a. Notice where failure to pay rent*

*b. 19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),*

*i. (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*

c. *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.*

i. *(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.*

17. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 1-April-2023 the tenant was still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.

18. I find the tenant should have vacated the property by 1-April-2023.

### **Decision**

19. The landlord's claim for an order for vacant possession succeeds.

20. The tenant shall vacate the premises immediately

21. 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.

22. As this tribunal does not consider future rent, the tenants shall pay a daily rate for rent beginning 4-April-2023 in the amount of \$64.11 a day as outlined in paragraph 13, until such time as the landlord regains possession of the property.

## Summary of Decision

23. The tenant shall:

Pay the landlord \$2121.61 as follows:

Rent .....\$2121.61

24. Pay a daily rate of rent beginning 4-May-2023 of \$64.11, until such time as the landlord regains possession of the property.

25. Vacate the property immediately

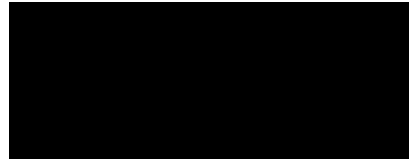
26. Pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

27. The landlord

- Will be awarded an Order of Possession.

May 5, 2023

Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office