

## Residential Tenancies Tribunal

Application 2023-0271-NL

Decision 23-0271-00

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 9:02 a.m. on 4-May-2023.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” and her authorized representative [REDACTED] (TT#1) attended by teleconference.

### Preliminary Matters

4. The landlord states that there is a verbal rental agreement that started with her as landlord in 2017. The tenant had been in the unit since September 2014. Rent is \$800 per month paid on the last day of the month for that current month. There was no security deposit paid.
5. The landlord submitted an affidavit (LL#1) with her application stating that she had served the tenant with the notice of the hearing personally at the residential premises. The tenant confirmed that she received the document on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. The landlord amended the application to increase outstanding rent from \$800.00 as per application to \$3200.00 to include the months of March, April and May. The landlord is also seeking hearing expenses reimbursed.

### Issues before the Tribunal

7. The landlord is seeking:
  - a. Rent \$3200.00
  - b. Vacant possession of rental premises
  - c. 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 \$3200

#### Relevant Submissions

10. The landlord submitted a written rental ledger (LL#2) as follows:

31-Oct-22	October Rent Due	800.00	Ø	800.00
31-Oct-22	Payment		520.00	280.00
19-Nov-22	Payment		280.00	Ø
30-Nov-22	November Rent Due	800.00	Ø	800.00
5-Dec-22	Payment		400.00	400.00
31-Dec-22	December Rent Due	800.00	Ø	1200.00
05-Jan-23	Payment		800.00	400.00
12-Jan-23	Payment		400.00	Ø
31-Jan-23	January Rent Due	800.00	Ø	800.00
01-Feb-23	Payment		400.00	400.00
28-Feb-23	February Rent Due	800.00	Ø	1200.00
02-Mar-23	Payment		400.00	800.00

#### Analysis

11. Non-payment of rent is a violation of the rental agreement. The landlord stated that there is rental arrears in the amount of \$3200.00 once outstanding rent for the months of March, April and May are added. A landlord's termination notice with cause was given to the tenant on 23-March-2023 under section 19; failure to pay rent with a termination date of 5-April-2023 (LL#3). The tenant confirmed receiving the notice on that date. This is a good notice.
12. 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 28-February-2023 to 30-April-2023 in the amount of \$2400.00 and rent from 1-May to 4-May in the amount of \$105.20 for a total of \$2505.20 and then a daily rate shall apply as calculated below:

Date	Action	Amount	Total
Janaury 12, 2023	Balance		0.00
January 31, 2023	Rent due	800.00	-800.00
February 1, 2023	Payment	400.00	-400.00
February 28, 2023	Rent due	800.00	-1200.00
March 2, 2023	Payment	400.00	-800.00
March 31, 2023	Rent due	800.00	-1600.00
April 30, 2023	Rent due	800.00	-2400.00
May 1-4, 2023	Rent due	105.20	-2505.20

Daily rate: \$800 x 12 months = \$9600  
\$9600 divided by 365 days = \$26.30 per day

## Decision

13. The landlord's claim for rental arrears succeeds

## Issue 2: Vacant Possession of the Rental Premises

### Relevant Submissions

14. 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 23-March-2023, with a termination date of 5-April-2023 (LL#3).

## Analysis

15. 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.*

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

17. I find the tenant should have vacated the property by 5-April-2023.

### **Decision**

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

19. The tenant shall vacate the premises immediately

20. 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.

21. As this tribunal does not consider future rent, the tenant shall pay a daily rate for rent beginning 5-May-2023 in the amount of \$26.30 a day as outlined in paragraph 12, until such time as the landlord regains possession of the property.

### **Issue 3: Hearing Expenses**

22. 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

23. The tenant shall:

Pay the landlord \$2525.20 as follows:

Rent .....	\$2505.20
Hearing expenses ...	20.00
Total	<u>\$2525.20</u>

24. Pay a daily rate of rent beginning 5-May-2023 of \$26.30, until such time as the landlord regains possession of the property.

25. Vacate the property immediately

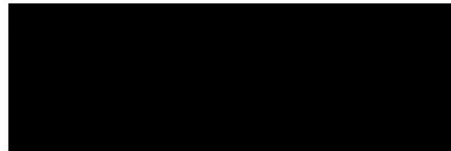
26. Pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

27. The landlord

- Will be awarded an Order of Possession.

May 8, 2023

Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office