

Residential Tenancies Tribunal

Application 2023-0285-NL

Decision 23-0285-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 11.13 a.m. on 10-May-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference. [REDACTED] was also present.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The tenant, [REDACTED] did not attend the hearing and I tried to reach him via telephone but was unable to reach him. I left a message with the conference number for him to call if he wanted to join the hearing. [REDACTED] stated that he does not live there anymore and he never received the documents. I asked the landlord if he was aware that [REDACTED] left the unit and he stated that this is the first time he has heard of [REDACTED] leaving.
5. The landlord states that there was a written fixed rental agreement in 2020 which is now a month to month tenancy. The tenant moved into the unit in June 2020 and rent is \$1000.00 per month due on the first of each month. The landlord states that a security deposit of \$750.00 was due in June 2020 but only \$500.00 was paid. The tenant disputes this and states that the security deposit was paid in full.
6. The landlord submitted an affidavit (LL#1) with his application stating that the tenants were both served with the notice of the hearing via prepaid registered mail [REDACTED] on 14-April-2023. The tenant confirmed that she received the document and that there were 2 separate documents in the envelope addressed individually to each tenant. Canada Post tracking services shows that the envelope was signed for on 20-April-2023. In accordance with the *Residential Tenancies Act, 2018* this is good service.
7. The landlord amended the application to increase outstanding rent from \$2913.65 as per application to \$5240.95 to include the months of April and May. The landlord is also seeking hearing expenses reimbursed.

Issues before the Tribunal

8. The landlord is seeking:
 - a. Rent \$5240.95
 - b. Vacant possession of rental premises
 - c. Late fees \$75.00
 - d. Hearing expenses \$20.00

Legislation and Policy

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

10. 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 and Section 15.

Issue 1: Rent \$5240.95

Relevant Submissions

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

2022				
Jan 01	Jan Rent	1,000.00	1,000.00	\$1250.00
Feb 01	Feb Rent	1,000.00	1,000.00	\$1250.00
Mar 01	Mar Rent	1,000.00	1,000.00	\$1250.00
April 01	April Rent	1,000.00	1,000.00	\$1250.00
May 01	May Rent	1,000.00	1,000.00	\$1250.00
June 01	June Rent	1,000.00	1,000.00	\$1250.00
July 01	July Rent	1,000.00	1,000.00	\$1250.00
Aug 01	Aug Rent	1,000.00	1,000.00	\$1250.00
Sept 01	Sept Rent	1,400.00	1,000.00	\$1650.00
Oct 01	Oct Rent	1,400.00	1,000.00	\$1050.00
Nov 01	Nov Rent	1,400.00	1,000.00	\$1450.00
Dec 01	Dec Rent	1,400.00	1,000.00	\$1850.00
2023				
Jan 01	Jan Rent	\$1400.00	\$1,000.00	\$2250.00
Feb 01	Feb Rent	\$1400.00	\$1,000.00	\$2650.00
March 01/23	March Rent	\$1400.00	\$1736.35	\$2913.65

Analysis

12. Non-payment of rent is a violation of the rental agreement. The landlord stated that there is rental arrears in the amount of \$5240.95 once outstanding rent for the months of April and May are added less payment from Income Support. A landlord's termination notice with cause was given to the tenants on 14-March-2023 under section 19; failure to pay rent with a termination date of 25-March-2023 (LL#3). The tenant confirmed receiving the notice on that date. 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 dating back as far as 10-June-2020 (last zero balance) to 30-April-2023 in the amount of \$4240.95 and rent from 1-May to 10-May in the amount of \$460.30 for a total of \$4701.25 and then a daily rate shall apply as calculated below:

January 1, 2022		Balance		-\$250.00
January 1, 2022	Rent due		\$1,000.00	-\$1,250.00
January 1, 2022		Payment	\$1,000.00	-\$250.00
February 1, 2022	Rent due		\$1,000.00	\$1,250.00
February 1, 2022		Payment	\$1,000.00	-\$250.00
March 1, 2022	Rent due		\$1,000.00	-\$1,250.00
March 1, 2022		Payment	\$1,000.00	-\$250.00
April 1, 2022	Rent due		\$1,000.00	-\$1,250.00
April 1, 2022		Payment	\$1,000.00	-\$250.00
May 1, 2022	Rent due		\$1,000.00	-\$1,250.00
May 1, 2022		Payment	\$1,000.00	-\$250.00
June 1, 2022	Rent due		\$1,000.00	-\$1,250.00
June 1, 2022		Payment	\$1,000.00	-\$250.00
July 1, 2022	Rent due		\$1,000.00	-\$1,250.00
July 1, 2022		Payment	\$1,000.00	-\$250.00
August 1, 2022	Rent due		\$1,000.00	-\$1,250.00
August 1, 2022		Payment	\$1,000.00	-\$250.00
September 1, 2022	Rent due		\$1,400.00	-1650.00
September 1, 2022		Payment	\$1,000.00	-650.00
October 1, 2022	Rent due		\$1,000.00	-2050.00
October 1, 2022		Payment	\$1,000.00	-1050.00
November 1, 2022	Rent due		\$1,400.00	-2450.00
November 1, 2022		Payment	\$1,000.00	-1450.00
December 1, 2022	Rent due		\$1,400.00	-2850.00
December 1, 2022		Payment	\$1,000.00	-1850.00
Januray 1, 2023	Rent due		\$1,400.00	-3250.00
January 1, 2023		Payment	\$1,000.00	-2250.00
February 1, 2023	Rent due		\$1,400.00	-3650.00
February 1, 2023		Payment	\$1,000.00	-2650.00

March 1, 2023	Rent due		\$1,400.00	-4050.00
March 1, 2023		Payment	\$736.35	-3313.65
April 1, 2023	Rent due		\$1,400.00	-4713.65
April 1, 2023		Payment	\$472.70	-4240.95
May 1-10, 2023	Rent due		\$460.30	-4701.25

Daily rate: \$1400 x 12 months = \$16800
\$16800 divided by 365 days = \$46.03 per day

Decision

14. The landlord's claim for rental arrears succeeds

Issue 2: Late Fees \$75.00

15. The landlord is seeking late fees in the amount of \$75.00

Analysis

16. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

17. The maximum rate of \$75.00 is allowable

Issue # 3: Vacant Possession of the Rental Premises

Relevant Submissions

18. 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 14-March-2023, with a termination date of 25-March-2023 (LL#3).

Analysis

19. 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.

20. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 25-March-2023 the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice.

21. I find the tenant should have vacated the property by 25-March-2023.

Decision

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

23. The tenant shall vacate the premises immediately

24. 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.

25. As this tribunal does not consider future rent, the tenant shall pay a daily rate for rent beginning 11-May-2023 in the amount of \$46.03 a day as outlined in paragraph 13, until such time as the landlord regains possession of the property.

Issue # 4: Hearing Expenses

26. The landlord paid a fee of \$20.00 to file the application. Also, the landlord paid a postal fee to send the Notice of the Hearing to the respondents, however the landlord failed to submit a copy of the receipt. 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

27. The tenant shall:

Pay the landlord \$4796.25 as follows:

Rent	\$4701.25
Late fees	75.00
Hearing expenses ...	20.00
Total	<u>\$4796.25</u>

28. Pay a daily rate of rent beginning 11-May-2023 of \$46.03, until such time as the landlord regains possession of the property.

29. Vacate the property immediately

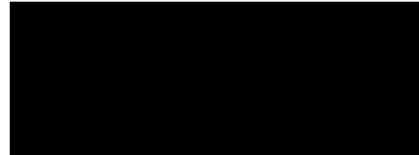
30. Pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

31. The landlord

- Will be awarded an Order of Possession.

May 15, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office