

Residential Tenancies Tribunal

Application 2023-0308-NL

Decision 23-0308-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 11:14 a.m. on 17-May-2023.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord" attended by teleconference. Also present was [REDACTED]
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "the tenants" did not attend.

Preliminary Matters

4. The tenants did not attend the hearing. I tried calling tenant 1 but no answer and I could not leave a voice message. The landlord submitted 3 separate affidavits (LL#1) with their application stating that they had served the tenants with notice of the hearing on 12-April-2023 via prepaid registered mail [REDACTED] and [REDACTED] respectively). Canada Post tracking confirms delivery on 16-April-2023 for tenant 1. The other 2 envelopes were never picked up. 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 he has been properly served. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. The landlord states that there was a written fixed rental agreement in 2018 which gets signed over to a new fixed agreement each year (LL#2). The tenant moved into the unit on August 1, 2018 and rent is currently \$995.00 per month due on the first of each month. The landlord states that a security deposit of \$470.00 was paid on November 3, 2020 and is still in the company's possession.

6. The landlord amended the application to omit rental arrears, late fees, and application of the security deposit as rent is now paid up to date. The landlord is seeking hearing expenses reimbursed.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Vacant possession of rental premises
 - b. Hearing expenses \$68.95

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: Vacant Possession of Rental Premises

Relevant Submissions

10. The landlord submitted a rental ledger (LL#3) showing that there was a credit balance of \$1016.00 on 13-March-2023 when the termination notice was given and there was still an outstanding balance of \$1016 on 26-March-2023 when the tenant was asked to vacate the premises.
11. The landlord submitted a termination notice on a *Landlord's Notice to Terminate Early – Cause* form under section 19; Notice where failure to pay rent. The notice was dated for 13-March-2023 to vacate on 26-March-2023 (LL#4).

Analysis

12. Upon evaluation of the termination notice, I find that the notice was served in compliance with the requirements 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.

13. The rent ledger shows that the tenant's rent is currently paid up to date however the tenants were in rental arrears in excess of the 5 days when the notice was given on 13-March-2023 and on the date of termination, 26-March-2023 the tenants were still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.

14. I find the tenants should have vacated the property by 26-March-2023.

Decision

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

16. The tenants shall vacate the premises immediately

17. The tenants 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.

Issue # 2: Hearing Expenses

18. The landlord paid an application fee of \$20.00 and paid postal costs of \$48.95 to send documents via prepaid registered mail. All receipts on file (LL#5). As the landlord's claim has been successful, the tenants shall pay the \$68.95. The landlord's claim for hearing expenses succeeds in the amount of \$68.95.

Summary of Decision

19. The tenants shall:

Pay the landlord \$68.95 as follows:

hearing expenses	\$68.95
Total	<u>\$68.95</u>

20. Vacate the property immediately

21. 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. The landlord will be awarded an Order of Possession.

May 18, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office