

Residential Tenancies Tribunal

Application 2023-No.0327 -NL Decision 23-0327-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 09:03 a.m. on 07-June-2023.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED] are represented by [REDACTED] [REDACTED] she is hereinafter referred to as "the tenant." [REDACTED] did not attend.

Preliminary Matters

4. The landlords submitted an affidavit (LL#01) stating that landlord1 served the tenants of notification of today's hearing on 24-May-2023 in person. The tenant confirmed receipt of notification as stated by the landlord.
5. There was a previous hearing on this residence and an order 2023-0151-NL was awarded to the landlords. The award is for rent totaling \$2,100.00 and late fees \$75.00. The landlord confirms that the tenants have paid the \$2,100.00 since the order however, the late fees are still outstanding. The landlords' current claim for late fees will be removed from their application, as those fees have already been awarded.
6. Landlord1 is also amending the application to increase rent owed from \$700.00 to \$1,279.00 to show the current amount due. As there is a termination notice considered, security deposit applied to monies owed has also been added.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent \$1,279.00
 - Security deposit applied against monies owed \$525.00
 - 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 14: Security deposit, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$1,279.00

Landlords' Position

10. Landlord1 stated they have a written rental agreement with the tenants. The tenants were living at the property when they purchased the building in September 2021. They have a monthly agreement. The tenants pay \$700.00 a month for rent. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. Landlord1 said that the tenants paid a security deposit of \$525.00; they received this when they purchased the property and they are still in possession of the deposit.
11. The landlord submitted a rent ledger (LL#02):

Rent ledger
2023-0327-NL

Date	Action	Amount	total
27-Mar-23	previous order 2023-0151-NL	2175.00	2175.00
2-Apr-23	payment	-2100.00	75.00
1-Apr-23		700.00	775.00
1-May-23		700.00	1475.00
1-Jun-23		700.00	2175.00
1-Jun-23	payment	-896.00	1279.00

12. The landlords are seeking full compensation of rent owed.

Tenants' Position

13. Tenant1 confirms the details of the rental agreement and confirms that they moved in May 2020.
14. She also confirms the rent ledger as stated by the landlord.

Analysis

15. Non-payment of rent is a violation of the rental agreement. I accept the testimony of both parties that the tenants owe rent. In reference to the rent payments the following amendments must be made to the rent ledger for the purpose of this decision.
- The previous award 2023-0151-NL cannot be considered or reviewed in this hearing, these amounts both owed and paid will be removed from the ledger and the ledger will start fresh with the 01-April-2023 rent owed.
 - Additionally as this tribunal doesn't consider future rent, the ledger will be amended to show a daily rate for June up to and including the date of the hearing.

16. Revised ledger as follows:

Rent ledger 2023-0327-NL			
1-Apr-23	rent due	700.00	700.00
1-May-23	rent due	700.00	1400.00
1-Jun-23	daily rate rent June 01 - 07	161.07	1561.07
1-Jun-23	payment	-896.00	665.07

Daily rate: \$700.00 x 12 months = \$8,400.00
\$8,400.00 divided by 365 days = \$23.01 a day
\$23.01 x 7 days = \$161.07

17. The tenant shall pay the landlord the rent owed totaling \$665.07.

Decision

18. The landlord's claim for rent succeeds in the amount of \$665.07.

Issue 2: Security deposit applied against monies owed \$525.00

Relevant Submissions

19. Landlord1 stated in paragraph 10 that the tenants paid a security deposit of \$525.00 on at the start of their tenancy and they are still in possession of the deposit.

Analysis

20. The landlords' claim for losses has been successful, paragraph 18, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

- 14. (10) Where a landlord believes he or she has a claim for all or part of the security deposit,*
- (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*
- (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit*

Decision

21. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$525.00.

Issue 3: Vacant Possession of the Rental Premises

Landlords' Position

22. The landlords submitted a termination notice (LL#03). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 30-March-2023, with a termination date of 10-April-2023.
23. Landlord1 said that they had served the tenants with a couple of notifications during this time. He confirmed that he had to change the notice to meet the requirements of the Act. He explained that this was the last notice he served and he brought it in person and handed it to the tenants. He told them at that time that this was the updated notice.

Tenants' Position

24. The tenant said that she didn't receive this notification until May just before the hearing. She later changed that to say she received the notification a couple of days before she received the decision and order from the last hearing.
25. Subsequently, she said that she had been in hospital and could be confused about the dates.

Analysis

26. I accept the timelines stated by the landlord. He was clear and detailed about the service of the notice. The tenant acknowledged she may have been confused and in consideration of the number of notices and a previous decision and order being sent to them, she may be recalling the service of another document.
27. 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.*
28. As shown in the rent ledger in paragraph 11, the tenants were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenants were still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.
29. The tenants should have vacated the property by 10-April-2023.

Decision

30. The landlords' claim for an order for vacant possession succeeds.
31. The tenants shall vacate the premises immediately.
32. The tenants shall pay to the landlords 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.

33. The tenants shall pay a daily rate for rent beginning 08-June-2023 of \$23.01, as per paragraph 16, until such time as the landlords regain possession of the property.

Issue 4: Hearing expenses reimbursed \$20.00

34. The landlords submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenants.

Summary of Decision

35. The tenants shall:

- Pay the landlords \$160.07 as follows:
 - Rent \$665.07
 - Hearing expenses 20.00
 - Security deposit applied (525.00)
 - Total \$160.07
- Pay a daily rate of rent beginning 08-June-2023 of \$23.01, until such time as the landlords regain possession of the property.
- Vacate the property immediately
- Pay to the landlords 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.
- Shall retain the security deposit of \$525.00

June 09, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office