

Residential Tenancies Tribunal

Application 2023-No.0415-NL

Decision 23-0415-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:54 p.m. on 13-June-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing; I reached him by telephone at the start of the hearing and he confirmed he would not be attending. 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. The landlord submitted an affidavit and proof of service (LL#01) with his application stating that he had served the tenant with notice of the hearing, in person on 19-May-2023 and again electronically on 20-May-2023 to the tenant's phone number [REDACTED]. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. The landlord amended his application to increase rent from \$800.00 to \$3,200.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$3,200.00
 - Security deposit applied against monies owed \$400.00
 - Vacant possession of rental premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. 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 \$3,200.00

Relevant Submissions

9. The landlord stated that he has a verbal rental agreement with the tenant. He said that he purchased the property in February 2023. The tenant was already living there. His agreement is for rent of \$800.00 a month which included utilities. He said that the tenant is supposed to pay \$400.00 at the beginning and middle of each month. The landlord said that the tenant paid the former homeowner \$400.00 security deposit and he received this deposit when he purchased the house; he is still in possession of the deposit.
10. The landlord explained that after he bought the house the tenant only made the first rent payment on 16-February-2023 of \$400.00, he said he has not received any further payments. He submitted a rent ledger (LL#02) as follows:

Rent ledger
2023-0415-NL

Date	Action	Amount	total
14-Feb-23	rent due	400.00	400.00
16-Feb-23	payment	-400.00	0.00
1-Mar-23	rent due	400.00	400.00
14-Apr-23	rent due	400.00	800.00
1-Apr-23	rent due	400.00	1200.00
14-Apr-23	rent due	400.00	1600.00
1-May-23	rent due	400.00	2000.00
14-May-23	rent due	400.00	2400.00
1-Jun-23	rent due	400.00	2800.00

11. Note: ledger is amended, the middle June 2023 rent due has not been included, as this tribunal doesn't consider future rent.
12. The landlord is seeking full compensation for rent owed.

Analysis

13. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$2,800.00
14. The tenant shall pay the landlord the rent owed totaling \$2,800.00.

Decision

15. The landlord's claim for rent succeeds in the amount of \$2,800.00.

Issue 2: Security deposit applied against monies owed \$400.00

Relevant Submissions

16. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$400.00 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

17. The landlord's claim for losses has been successful, (paragraph 15) and he 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

18. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$400.00.

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

19. The landlord submitted a number of termination notices; the most recent 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 20-April-2023 with a termination date of 01-May-2023.
20. The landlord explained that he served the tenant electronically on 20-April-2023 at 2:12 p.m. with notification.

Analysis

21. 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.

22. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The notice was served in accordance of the Act. The termination notice meets the requirements of the Act and is a valid notice.
23. The tenant should have vacated the property by 01-May-2023.

Decision

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

25. The tenant shall vacate the premises immediately.
26. 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.
27. The tenant shall pay a daily rate for rent beginning 14-June-2023 of \$26.30, until such time as the landlords regain possession of the property. Daily rate is calculated as follows: $\$800.00 \times 12 \text{ months} = \$9,600.00$ per year divided by 365 days = \$26.30 a day.

Summary of Decision

28. The tenant shall:
 - Pay the landlord \$2,400.00 as follows:
 - Rent \$2,800.00
 - Security deposit applied (400.00)
 - Total..... \$2,400.00
 - Pay a daily rate of rent beginning 14-June-2023 of \$26.30, until such time as the landlord regains possession of the property.
 - Vacate the property immediately
 - 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.

The landlord

- Will be awarded an Order of Possession.
- Shall retain the security deposit of \$400.00

June 20, 2023
Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office