

## Residential Tenancies Tribunal

Application 2023-0438-NL

Decision 23-0438-00

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 1:56 p.m. on 21-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 and I was unable to reach her by telephone at the start of the hearing. I left a voicemail message with the toll free number and conference ID. 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 she has been properly served. The landlord submitted an affidavit with his application stating that he served the tenant with the notice of hearing by pre-paid registered mail; [REDACTED] on 1-June-2023 (LL#1). The registered mail tracking indicates that the tenant did not retrieve her mail. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. This is good service. 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 her absence.
5. The landlord states that there was a written fixed rental agreement which commenced on 1-April-2022. Rent is \$750.00 per month and is due on the first day of each month. NL Housing pays \$601.00 each month and the tenant pays \$149.00 per month. The landlord states that a security deposit was never paid.

6. The landlord amended the application to increase rent from \$596.00 as per the application to \$745.00 to include the tenants outstanding rent of \$149.00 for the month of June. The landlord is seeking hearing expenses reimbursed.

#### Issues before the Tribunal

7. The landlord is seeking:
  - a. Rent paid \$745.00
  - b. Vacant possession of rental premises
  - c. Hearing expenses \$33.84

#### 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 Paid \$745.00

##### Relevant Submissions

10. The landlord testified that rent was outstanding in the amount of \$745.00 and in support of the claim submitted a rental ledger (LL#2) as follows:

Rent due for Oct 22/21	\$149.00
Rent due for March 2023	\$149.00
Rent due for April 2023	\$149.00
Rent due for May 2023	\$149.00
	Total
	<del>\$596</del> \$ 596.00

#### 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 \$745.00 once outstanding rent for the month of June is added.

12. The rental ledger is amended to show a daily rate for June 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 1-October-2022 (last zero balance) to 31-May-2023 in the amount of \$596.00 and rent from 1-June to 21-June in the amount of \$102.90 for a total of \$698.90 and then a daily rate shall apply as calculated below:

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Date	Action	Amount	Total
September 30, 2022	Balance		\$0.00
October 1, 2022	Rent due	\$149.00	\$149.00
November 1, 2022	Rent due	\$149.00	\$298.00
November 1, 2022	Payment	-\$149.00	\$149.00
December 1, 2022	Rent due	\$149.00	\$298.00
December 1, 2022	Payment	-\$149.00	\$149.00
January 1, 2023	Rent due	\$149.00	\$298.00
January 1, 2023	Payment	-\$149.00	\$149.00
February 1, 2023	Rent due	\$149.00	\$298.00
February 1, 2023	Payment	-\$149.00	\$149.00
March 1, 2023	Rent due	\$149.00	\$298.00
April 1, 2023	Rent due	\$149.00	\$447.00
May 1, 2023	Rent due	\$149.00	\$596.00
June 1-21, 2023	Rent due	\$102.90	\$698.90

Daily rate:  $\$149 \times 12 = \$1788$  per year  
 $\$1788 / 365 \text{ days} = \$4.90$  per day

13. I find the tenant shall pay the landlord \$698.90 in outstanding rent for the period of 1-October to 21-June and then a daily rate of \$4.90 shall be applied.

### Decision

14. The landlord's claim for rental arrears succeeds.

### Issue # 2: Vacant Possession of Rented Premises

#### Relevant submissions:

15. The landlord submitted a termination Notice under Section 19; failure to pay rent. The notice was signed and dated for 6-May-2023, with a termination date of 17-May-2023 (LL#3).

### Analysis

16. Section 19 of the *Residential Tenancies Act, 2018* 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.*

17. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 17-May-2023 the tenant was still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.

18. I find the tenant should have vacated the premises by 17-May-2023.

#### **Decision**

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

20. The tenant shall vacate the premises immediately

21. 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.

22. As this tribunal does not consider future rent, the tenant shall pay a daily rate for rent beginning 22-June-2023 in the amount of \$4.90 a day as outlined in paragraph 12, until such time as the landlord regains possession of the property.

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

23. The landlord paid an application fee of \$20.00 (LL#4). As well, the landlord paid a postal fee of \$13.84 for pre-paid registered mail (LL#5). As the landlord's claim has been successful, the tenant shall pay the \$33.84. The landlord's claim for hearing expenses succeeds in the amount of \$33.84.

## Summary of Decision

24. The tenant shall:

Pay the landlord \$732.74 as follows:

Rent .....	\$698.90
Hearing expenses .....	<u>33.84</u>
Total .....	<u>\$732.74</u>

25. Orders that the tenant pay a daily rate of rent beginning 22-June-2023 of \$4.90, until such time as the landlord regain possession of the property.

26. Vacate the property immediately

27. 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.

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

July 5, 2023

Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office