



## Residential Tenancies Tribunal

Application 2023-0472-NL  
 2023-0480-NL

Decision 23-0472-00

Pamela Pennell  
 Adjudicator

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### Introduction

1. Hearing was called at 1:45 p.m. on 28-June-2023.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondent and counter applicant [REDACTED] hereinafter referred to as "the tenant", participated in the hearing. All parties attended via teleconference.

### Preliminary Matters

3. The rental unit is a single family home whereby the tenant resided on the main. There was a written month to month rental agreement that commenced on 15-March-2022. Rent is \$1200.00 per month and is paid semi-monthly. A security deposit of \$600.00 was paid on 15-March-2022 and is in the possession of the landlord.
4. The landlord submitted an affidavit stating that she served the landlord the notice of hearing on 6-June-2023 personally at the residential premises (LL#1). The tenant confirmed receiving it on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The landlord amended the application to increase rent from \$3000.00 as per application to \$3600.00.

### Issues before the Tribunal

6. The landlord is seeking:
  - Vacant possession of the rented premises
  - Rent paid \$3600.00
  - Security deposit applied against payment owed \$600.00
  - Hearing expense reimbursed \$20.00
7. The tenant is seeking:
  - Validity of termination notice
  - Compensation paid for Inconvenience \$2700.00

## 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 19: Notice where failure to pay rent and section 10; statutory conditions

### Issue 1: Rent Paid \$3600.00

#### Analysis

10. The landlord appeared to be confused as to how much rent was due. She initially testified that \$5400.00 was outstanding but then changed her mind after listening to the tenant's account of when he paid rent. She is seeking rent in the amount of \$3600.00 for the months of April, May and June 2023.
11. The tenant gave a step by step break down of when he paid rent and how much. He submitted a copy of his bank records to support his claim (TT#1). He testified that he provided the landlord with his bank records so she could determine the outstanding rental amount for her application.
12. The tenant testified that rent was paid up to the end of April and he refused to pay for the months of May and June due to a mold problem within the unit and the collapse of the back deck. I accept the tenant's testimony that he was experiencing problems with the unit and felt that he should not pay his rent until the issues were rectified however, there are proper steps that a tenant shall take to deal with those type of issues and withholding the payment of rent is not one of them. Under section 10.(1)1 a landlord is responsible to maintain the residential premises. If the landlord does not maintain the property, the tenant has the right to make application to the Residential Tenancies Office to seek a remedy, including but not limited too, obtaining an Order to pay rent in trust to the Office until the repairs are made. I find that the tenant does not have any ability to withheld rent unless otherwise directed to do so by Order from the Residential Tenancies Section.
13. 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-May to 28-June in the amount of \$2304.60 and then a daily rate shall apply as calculated below:

2023-0472-NL & 2023-0480-NL			
Date	Action	Amount	Total
April 30, 2023	Balance		\$0.00
May 1, 2023	Rent due	\$1,200.00	\$1,200.00
June 1-28, 2023	Rent due	\$1,104.60	\$2,304.60

$$\begin{aligned}\text{Daily rate: } \$1200 \times 12 &= \$14400 \\ \$14400 / 365 &= \$39.45\end{aligned}$$

#### Decision

14. I find that the landlord's claim for outstanding rent succeeds in the amount of \$2304.60.

## Issue 2: Security deposit applied against payment owed \$600.00

### Analysis

15. The landlord's claim for losses has been successful as per paragraph 14, and she 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

16. The landlords' claim to retain the security deposit of \$600.00 against monies owed succeeds.

## Issue 3: Validity of Termination Notice

## Issue 4: Vacant Possession of the Rental Premises

### Relevant Submissions

17. The landlord submitted a copy of a termination notice issued to the tenant on a *Landord's Notice to Terminate Early – Cause form (LL#2)*. It was dated for 15-May-2023 under section 19; Notice where failure to pay rent to vacate the premises by 26-May-2023.

### Analysis

18. 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**

**1. rented from *month to month*,**

**2. rented for a fixed term, or**

**3. 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**

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- (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.*

19. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 26-May-2023 the tenant was still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.

20. I find the tenant should have vacated the property by 26-May-2023.

### **Decision**

21. The landlord's claim for vacant possession succeeds.

22. The tenant shall vacate the premises immediately

23. 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.

24. As this tribunal does not consider future rent, the tenant shall pay a daily rate for rent beginning 29-June-2023 in the amount of \$39.45 a day as outlined in paragraph 13, until such time as the landlord regains possession of the property.

### **Issue 5: Compensation paid for Inconveniences \$2700.00**

### **Analysis**

25. The tenant is seeking compensation for inconveniences in the amount of \$2700.00 and testified that [REDACTED]

[REDACTED] He testified that he had a 3 week job that would pay him \$900.00 per week which was not supported in evidence. He further indicated [REDACTED]

26. Evidence does show some mold in the unit. There was no evidence to suggest what type of mold or the toxicity of it. Further, there was no medical evidence to remotely link the presence of mold to any medical condition of the tenant.

27. As such, I find that the landlord is not responsible for the loss of income due to the tenant's illness.

### **Decision**

28. The tenant's claim for compensation for inconveniences does not succeed.

**Issue 6: Hearing Expenses \$20.00**

29. The landlord paid an application fee of \$20.00 (LL#3). As the landlord's claim has been successful, the tenant shall pay the \$20.00. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

**Summary of Decision:**

30. The tenant shall:

Pay the landlord \$1724.60 as follows:

Rent .....	\$2304.60
Hearing expenses .....	20.00
Less: Security deposit .....	(600.00)
Total .....	<u>\$1724.60</u>

31. Orders that the tenant pay a daily rate of rent beginning 29-June-2023 of \$39.45, until such time as the landlord regain possession of the property.

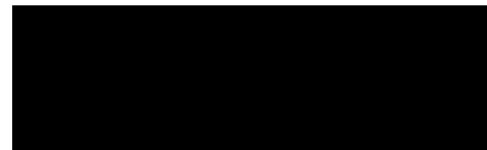
32. Vacate the property immediately

33. 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.

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

July 17, 2023

Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office