

Residential Tenancies Tribunal

Application 2023-0475-NL

Decision 23-0475-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:56 p.m. on 5-July-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 him by telephone at the start of the hearing. 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 respondents fail 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 with their application stating that they served the tenant with the notice of hearing via prepaid registered mail; [REDACTED] to the residential premises on 12-June-2023 (LL#1). Canada Post tracking shows that it was delivered on 15-June-2023 (LL#2). In accordance with the *Residential Tenancies Act, 2018* 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 his absence.
5. The landlord's representative states that there is a written term rental agreement which commenced on 1-February-2022 (LL#3). The current rent \$935.00 per month and is due on the first day of each month. [REDACTED] The landlord states that a security deposit of \$455.00 was paid in February 2022 and is in the landlord's possession.

6. The landlord amended the application to increase rent from \$1227.66 as per the application to \$1236.21 to include outstanding rent. The landlord is seeking hearing expenses reimbursed.

Issues before the Tribunal

7. The landlord is seeking:
- Rent paid \$1236.21
 - Vacant possession of rental premises
 - Security deposit applied against payment owed \$455.00
 - Hearing expenses \$34.20

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 14; Security deposit

Issue # 1: Rent Paid \$1236.21

Relevant Submissions

10. The landlord testified that rent was outstanding in the amount of \$1236.21 and in support of the claim submitted a rental ledger (LL#4) as follows:

3/1/2023	3/2023	R-4433546		0.00	0.00	0.00	0.00	547.00	-174.84
4/1/2023	4/2023	C-4140366	lmt_res - Lease Rent Residential	935.00	0.00	0.00	935.00	0.00	760.16
4/5/2023	4/2023	R-4458151		0.00	0.00	0.00	0.00	467.50	292.66
5/1/2023	5/2023	C-4161632	lmt_res - Lease Rent Residential	935.00	0.00	0.00	935.00	0.00	1,227.66

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 \$1236.21 once outstanding rent for the months of June and July is added and payments [REDACTED] are credited.
12. The rental ledger is amended to show a daily rate for July 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-April-2023 (last zero balance) to 30-June-2023 in the amount of \$301.21 and rent from 1-July to 5-July in the amount of \$153.70 for a total of \$454.91 then a daily rate shall apply as calculated below:

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Date	Action	Amount	Total
March 31, 2023	Balance		-\$174.84
April 1, 2023	Rent due	\$935.00	\$760.16
April 5, 2023		-\$467.50	\$292.66
May 1, 2023	Rent due	\$935.00	\$1,227.66
May 1, 2023		-\$1,393.95	-\$166.29
June 1, 2023	Rent due	\$935.00	\$768.71
June 1, 2023		-\$467.50	\$301.21
July 1-5, 2023	Rent due	\$153.70	\$454.91

Daily rate: $\$935 \times 12 = \11220 per year
 $\$11220 / 365 \text{ days} = \30.74 per day

13. I find the tenant shall pay the landlord \$454.91 in outstanding rent for the period of 1-April to 5-July and then a daily rate of \$30.74 shall be applied.

Decision

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

Issue # 2: Security deposit applied against payment owed \$455.00

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

16. The landlords' claim to retain the security deposit of \$455.00 against monies owed succeeds.

Issue # 3: Vacant Possession of Rented Premises

Relevant submissions:

17. The landlord submitted a termination notice under Section 18; Notice of termination of rental agreement. The notice was signed and dated for 31-January-2023, with a termination date of 30-April-2023 (LL#5).

Analysis

18. Section 18 of the *Residential Tenancies Act, 2018* states:

a. Notice of termination of rental agreement

b. 18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

i. (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month

19. The landlord gave a proper 3 month notice under section 18(2)(c) of the Residential Tenancies Act. The termination notice meets the requirements of the *Act* and is a valid notice.

20. I find the tenant should have vacated the premises by 30-April-2023.

Decision

21. The landlord's claim for an order 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 6-July-2023 in the amount of \$30.74 a day as outlined in paragraph 13, until such time as the landlord regains possession of the property.

Issue # 3: Hearing Expenses

25. The landlord paid an application fee of \$20.00 (LL#5). Also, the landlord paid a postage fee of \$14.20 (LL#6). As the landlord's claim has been successful, the tenant shall pay the \$34.20. The landlord's claim for hearing expenses succeeds in the amount of \$34.20.

Summary of Decision

26. The tenant shall:

Pay the landlord \$34.11 as follows:

Rent	\$454.91
Hearing expenses	34.20
Less: security deposit ..	<u>(455.00)</u>
Total	<u>\$34.11</u>

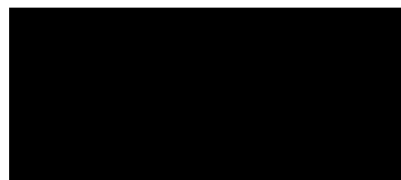
27. Orders that the tenant pay a daily rate of rent beginning 6-July-2023 of \$30.74, until such time as the landlord regain possession of the property.

28. Vacate the property immediately

29. 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.

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

July 20, 2023
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office