



## Residential Tenancies Tribunal

Application 2023-No.0507-NL

Decision 23-0507-00

Jacqueline Williams  
 Adjudicator

### Introduction

1. Hearing was called at 2:00 p.m. on 26-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 her 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 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 (LL#01) with her application stating that she had served the tenant with notice of the hearing, electronically on 19-June-2023 to the tenant's email [REDACTED]. This hearing was rescheduled and both parties were served by our office on 14-July-2023. 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 amended her application to increase rent from \$8,900 to \$12,100.00 to reflect the current amount of rent due. She also removed late fees from her application.

### Issues before the Tribunal

6. The landlord is seeking:
  - Rent \$12,100.00
  - Utilities \$179.50
  - Vacant possession of rental premises
  - Hearing Expenses \$20.00

## 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 is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

## Issue 1: Rent \$12,100.00

### Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. She entered a written term agreement with the tenant from 01-June-2022 until 31-May-2023. They are currently in a monthly agreement. The tenant pays \$1,600.00 a month, which doesn't include utilities. The rental period is from the 1<sup>st</sup> day of the month until the last day; rent is due the 1<sup>st</sup> day of each month. The landlord said that the tenant was supposed to pay a security deposit, however she did not; this non-payment is reflected in the rental agreement.
10. The landlord submitted a rent ledger (LL#03) as follows:

Rent ledger 2023-0507-NL				
Date	Action	Amount	total	
1-Jun-22	Rent due	1600.00	1600.00	
1-Jun-23	payment	-1600.00	0.00	
1-Jul-22	Rent due	1600.00	1600.00	
5-Jul-22	payment	-600.00	1000.00	
1-Aug-22	Rent due	1600.00	2600.00	
1-Sep-22	Rent due	1600.00	4200.00	
6-Sep-22	payment	-1600.00	2600.00	
20-Sep-22	payment	-1000.00	1600.00	
1-Oct-22	Rent due	1600.00	3200.00	
7-Oct-22	payment	-600.00	2600.00	
1-Nov-22	Rent due	1600.00	4200.00	
17-Nov-22	payment	-600.00	3600.00	
1-Dec-22	Rent due	1600.00	5200.00	
22-Dec-22	payment	-500.00	4700.00	
1-Jan-23	Rent due	1600.00	6300.00	
5-Jan-23	payment	-500.00	5800.00	
20-Jan-23	payment	-500.00	5300.00	
1-Feb-23	Rent due	1600.00	6900.00	
10-Feb-23	payment	-500.00	6400.00	

1-Mar-23	Rent due	1600.00	8000.00
3-Mar-23	payment	-500.00	7500.00
1-Apr-23	Rent due	1600.00	9100.00
3-Apr-23	payment	-500.00	8600.00
20-Apr-23	payment	-300.00	8300.00
1-May-23	Rent due	1600.00	9900.00
8-May-23	payment	-500.00	9400.00
23-May-23	payment	-500.00	8900.00
1-Jun-23	Rent due	1600.00	10500.00
1-Jul-23	daily rate due 01-26-July	1367.60	11867.60

Daily rate \$1,600.00 x 12 months = \$19,200.00

\$19,200.00 divided by 365 days = \$52.60

\$52.60 x 26 days = \$1,367.60

11. Note: ledger is amended to show a daily rate for July 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 (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$11,867.60.
14. The tenant shall pay the landlord the rent owed totaling \$11,867.60.

### Decision

15. The landlord's claim for rent succeeds in the amount of \$11,867.60.

### Issue 2: Utilities \$179.50

#### Relevant Submissions

16. The landlord stated that when the tenant first moved in she did not initially move the electricity bill into her name. The landlord provided the first billing (LL#04) from NL Power from 25-May-2022 – 23-June-2022, totaling \$236.69. After this billing period the tenant transferred the account into her name. The landlord is seeking compensation for a daily rate from 02-23 June-2023 totaling \$179.50.

### Analysis

17. As per the tenant's rental agreement, electricity is not included in her rental amount and she should have transferred the electricity into her name at the start of the tenancy.

18. The daily rate is calculated as follows: \$236.69 divided by 29 days = \$8.16 a day x 22 days = \$179.52. As the landlord has claimed \$179.50 this is the maximum amount that will be awarded.

### Decision

19. The landlord's claim for utilities succeeds in the amount of \$179.50.

### Issue 3: Vacant Possession of the Rental Premises

#### Relevant Submissions

20. The landlord submitted a termination notice (LL#05). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 09-May-2023, with a termination date of 20-May-2023.
21. The landlord said that she served the tenant electronically on 09-May-2023 at 9:42 a.m.

### Analysis

22. 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.*

- 23. 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 termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.
- 24. The tenant should have vacated the property by 20-May-2023.

#### **Decision**

- 25. The landlord's claim for an order for vacant possession succeeds.
- 26. The tenant shall vacate the premises immediately.
- 27. The tenant 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.
- 28. The tenant shall pay a daily rate for rent beginning 27-July-2023 of \$52.60, as per the table in paragraph 10, until such time as the landlord regains possession of the property.

#### **Issue 4: Hearing expenses reimbursed \$20.00**

- 29. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

## Summary of Decision

### 30. The tenant shall:

- Pay the landlord \$12,067.10 as follows:
  - Rent ..... \$11,867.60
  - Utilities ..... 179.50
  - Hearing expenses ..... 20.00
    - Total ..... \$12,067.10
- Pay a daily rate of rent beginning 27-July-2023 of \$52.60, 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.

July 28, 2023

Date

  
 Jacqueline Williams, Adjudicator  
 Residential Tenancies Office