



Residential Tenancies Tribunal

Application 2023-0530-NL

Decision 23-0530-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 17-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" attended by teleconference.

Preliminary Matters

4. The landlord's representative states that there is a written fixed rental agreement which commenced on 1-October-2021 (LL#1). Rent is \$1300.00 per month due on the first of each month. A security deposit of \$975.00 was paid in October 2021 and is still in the landlord's possession.
5. The landlord's representative submitted an affidavit (LL#2) stating that the tenant was served with the notice of hearing on 20-June-2023 electronically by emailing it to; [REDACTED] The tenant confirmed receiving the document on that day. According to the *Residential Tenancies Act, 2018* this is good service.
6. The application was amended to increase rent from \$3715.00 as per application to \$5015.00 to include rent for the month of July.
7. The landlord does not wish to have the security deposit applied against payment owed.

Issues before the Tribunal

8. The landlord is seeking:
 - a. Rent Paid \$5015.00
 - b. Vacant possession of rented premises

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. 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 \$5015.00

Relevant Submissions:

11. The landlord's representative testified that rent is outstanding in the amount of \$5015.00 and submitted a rent ledger to support their claim (LL#3).

Analysis

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

19. (2) *Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.*

19. (3) *Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.*

19. (4) *In addition to the requirements under section 34, a notice under this section shall*

(b) be signed by the landlord;

(c) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

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13. Non-payment of rent is a violation of the rental agreement. The tenant did not dispute that she was in rental arrears, she stated that she was not aware that the amount was as high but ultimately agreed that the landlord's ledger is correct.

14. 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 January 31, 2023 (last zero balance) to 30-June-2023 in the amount of \$3700.00 and rent from 1-July to 17-July in the amount of \$726.58 for a total of \$4426.58 then a daily rate shall apply as calculated below:

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Date	Action	Amount	Total
January 20, 2023	Payment	-\$1,300.00	\$0.00
February 1, 2023	Rent Due	\$1,300.00	\$1,300.00
February 28, 2023	Payment	-\$650.00	\$650.00
March 1, 2023	Rent Due	\$1,300.00	\$1,950.00
March 6, 2023	Payment	-\$650.00	\$1,300.00
April 1, 2023	Rent Due	\$1,300.00	\$2,600.00
April 18, 2023	Payment	-\$1,000.00	\$1,600.00
May 1, 2023	Rent Due	\$1,300.00	\$2,900.00
May 23, 2023	Payment	-\$500.00	\$2,400.00
June 1, 2023	Rent Due	\$1,300.00	\$3,700.00
July 1-17, 2023	Rent Due	\$726.58	\$4,426.58

Daily rate = \$1300 x 12 = \$15600

$$\$15600 / 365 = \$42.74 \text{ per day}$$

15. I find the tenant shall pay the landlord \$4426.58 in outstanding rent for the period of 1-February-2023 to 17-July-2023 and then a daily rate of \$42.74 shall be applied.

Decision

16. The landlord's claim for rent paid succeeds in the amount of \$4426.58.

Issue # 2: Vacant Possession of Rented Premises

Relevant Submission

17. The landlord submitted a termination Notice under Section 19; Notice where failure to pay rent. The notice was signed and dated for 12-May-2023, with a termination date of 23-May-2023 (LL#4).

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***
 - (i) ***rented from month to month,***

(ii) *4* *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.*

19. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 23-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 premises by 23-May-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 18-July-2023 in the amount of \$42.74 a day as outlined in paragraph 15, until such time as the landlord regains possession of the property.

Summary of Decision

1. The tenant shall:

Pay the landlord \$4426.58 as follows:

Rent	\$4426.58
Total	<u>\$4426.58</u>

2. The tenant shall vacate the property immediately.
3. The tenant shall pay a daily rate of \$42.74 until such time as the landlord regains possession of the property.
4. 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.
5. The landlord will be awarded an Order of Possession.

July 24, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office