

Residential Tenancies Tribunal

Application 2023-0534-NL

Decision 23-0534-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:42 p.m. on 4-July-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as "the tenants" did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlord submitted an affidavit with his application stating that he hired someone to serve the tenants with the notice of hearing personally at the residential premises on 22-June-2023 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. The landlord states that there was a written month to month rental agreement which commenced on 1-March-2022 (LL#2). Rent is \$750.00 per month and is due on the first day of each month. The landlord states that a security deposit of \$500.00 was never paid.

6. Respondent 2 has been removed from the application as the rental agreement only has respondent 1 listed as a tenant. The termination notice also only has respondent 1 properly listed as a tenant.

7. The landlord amended the application to increase rent from \$4800.00 as per the application to \$6250.00 to include rent that has come due since the filing of the application. The landlord is seeking hearing expenses reimbursed.

Issues before the Tribunal

8. The landlord is seeking:
 - a. Rent paid \$6250.00
 - b. Vacant possession of rental premises
 - c. Hearing expenses \$20.00

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 \$6250.00

Relevant Submissions

11. The landlord testified that rent was outstanding in the amount of \$6250.00 and in support of the claim submitted a rental ledger (LL#3) as follows:

2023-0534-NL			
Date	Action	Amount	Total
May 31, 2022	Balance	\$0.00	
June 1, 2022	Rent due	\$750.00	\$750.00
June 1, 2022	Payment	-\$600.00	\$150.00
July 1, 2022	Rent due	\$750.00	\$900.00
July 1, 2022	Payment	-\$500.00	\$400.00
August 1, 2022	Rent due	\$750.00	\$1,150.00
September 1, 2022	Rent due	\$750.00	\$1,900.00
Septebmer 1, 2022	Payment	-\$800.00	\$1,100.00
October 1, 222	Rent due	\$750.00	\$1,850.00
October 1, 2022	Payment	-\$800.00	\$1,050.00
November 1, 2022	Rent due	\$750.00	\$1,800.00
December 1, 2022	Rent due	\$750.00	\$2,550.00
January 1, 2023	Rent due	\$750.00	\$3,300.00
January 1, 2023	Payment	-\$800.00	\$2,500.00
February 1, 2023	Rent due	\$750.00	\$3,250.00
March 1, 2023	Rent due	\$750.00	\$4,000.00
April 1, 2023	Rent due	\$750.00	\$4,750.00

May 1, 2023	Rent due	\$750.00	\$5,500.00
May 1, 2023	Payment	-\$750.00	\$4,750.00
June 1, 2023	Rent due	\$750.00	\$5,500.00
July 1, 2023	Rent due	\$750.00	\$6,250.00

Analysis

12. Non-payment of rent is a violation of the rental agreement. The landlord stated that there is rental arrears in the amount of \$6250.00 once outstanding rent for the months of June and July is added.

13. 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-June-2022 (last zero balance) to 30-June-2023 in the amount of \$5500.00 and rent from 1-July to 4-July in the amount of \$98.64 for a total of \$5598.64 then a daily rate shall apply as calculated below:

2023-0534-NL			
Date	Action	Amount	Total
May 31, 2022	Balance	\$0.00	
June 1, 2022	Rent due	\$750.00	\$750.00
June 1, 2022	Payment	-\$600.00	\$150.00
July 1, 2022	Rent due	\$750.00	\$900.00
July 1, 2022	Payment	-\$500.00	\$400.00
August 1, 2022	Rent due	\$750.00	\$1,150.00
September 1, 2022	Rent due	\$750.00	\$1,900.00
Septebmer 1, 2022	Payment	-\$800.00	\$1,100.00
October 1, 222	Rent due	\$750.00	\$1,850.00
October 1, 2022	Payment	-\$800.00	\$1,050.00
November 1, 2022	Rent due	\$750.00	\$1,800.00
December 1, 2022	Rent due	\$750.00	\$2,550.00
January 1, 2023	Rent due	\$750.00	\$3,300.00
January 1, 2023	Payment	-\$800.00	\$2,500.00
February 1, 2023	Rent due	\$750.00	\$3,250.00
March 1, 2023	Rent due	\$750.00	\$4,000.00
April 1, 2023	Rent due	\$750.00	\$4,750.00
May 1, 2023	Rent due	\$750.00	\$5,500.00
May 1, 2023	Payment	-\$750.00	\$4,750.00
June 1, 2023	Rent due	\$750.00	\$5,500.00
July 1-4, 2023	Rent due	\$98.64	\$5,598.64

Daily rate: $\$750 \times 12 = \9000 per year

$\$9000 / 365$ days = \$24.66 per day

14. I find the tenant shall pay the landlord \$5598.64 in outstanding rent for the period of 1-June-2022 to 4-July-2023 and then a daily rate of \$24.66 shall be applied.

Decision

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

Issue # 2: Vacant Possession of Rented Premises⁴

Relevant submissions:

16. The landlord submitted a termination Notice under Section 19; failure to pay rent. The notice was signed and dated for 26-March-2023, with a termination date of 30-April-2023 (LL#4).

Analysis

17. 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.*

18. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 30-April-2023 the tenant was still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.

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

Decision

20. The landlord's claim for an order for vacant possession succeeds.
21. The tenant shall vacate the premises immediately
22. 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.

23. As this tribunal does not consider future rent, the tenant shall pay a daily rate for rent beginning 5-July-2023 in the amount of \$24.66 a day as outlined in paragraph 13, until such time as the landlord regains possession of the property.

Issue # 3: Hearing Expenses

24. The landlord paid an application fee of \$20.00 (LL#5). 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.

Issue # 4: payment of Security Deposit \$500.00

25. The landlord is seeking payment of the security deposit that was supposed to be paid in March 2022. As the landlord is successful in his claim for vacant possession, and considering that the security deposit is an asset of tenant, it is not reasonable to have the tenant pay the security deposit at this stage of the tenancy.

26. I find the landlord's claim to have security deposit paid does not succeed.

Summary of Decision

27. The tenant shall:

Pay the landlord \$5618.64 as follows:

Rent	\$5598.64
Hearing expenses	<u>20.00</u>
Total	<u>\$5618.64</u>

28. Orders that the tenant pay a daily rate of rent beginning 5-July-2023 of \$24.66, until such time as the landlord regain possession of the property.

29. Vacate the property immediately

30. 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.

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

July 18, 2023
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office