



Residential Tenancies Tribunal

Application 2023-No.0535-NL

Decision 23-0535-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 18-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 [REDACTED] 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 their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail [REDACTED]. The tracking number shows that the package was sent on 20-June-2023, the tenant never picked up the package. In accordance with Section 42 (6) of the *Residential Tenancies Act, 2018*, the package is considered served after 5 days. 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 their application to increase rent from \$2,367.00 to \$2,630.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$2,630.00
 - 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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$2,630.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. They entered a written monthly agreement with the tenant beginning 01-October-2022. The tenant pays \$263.00 a month. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant did not pay a security deposit.
10. The landlord explained that the tenant has never paid rent, she submitted a rent ledger (LL#03), see below:

Rent ledger
2023-0535-NL

Date	Action	Amount	total
1-Oct-22	Rent due	263.00	263.00
1-Nov-22	Rent due	263.00	526.00
1-Dec-22	Rent due	263.00	789.00
1-Jan-23	Rent due	263.00	1052.00
1-Feb-23	Rent due	263.00	1315.00
1-Mar-23	Rent due	263.00	1578.00
1-Apr-23	Rent due	263.00	1841.00
1-May-23	Rent due	263.00	2104.00
1-Jun-23	Rent due	263.00	2367.00
1-Jul-23	daily rate \$8.65 x 18	155.70	2522.70

Daily rate: \$263.00 x 12 months = \$3,156.00

\$3,156.00 divided by 365 days = \$8.65

\$8.65 x 18 days = \$155.70

11. Note: ledger is amended to show a daily rate for July as this tribunal doesn't consider future rent.

Analysis

12. 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 \$2,522.70.

13. The tenant shall pay the landlord the rent owed totaling \$2,522.70.

Decision

14. The landlord's claim for rent succeeds in the amount of \$2,522.70.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

15. The landlord submitted a termination notice (LL#03). It is in letter form and cites Section 19 of the *Residential Tenancies Act, 2018*, for failure to pay rent. The notice is signed and dated for 18-April-2023 with a termination date of 05-May-2023.

16. The landlord stated that the notice was served by prepaid registered mail and submitted the tracking number [REDACTED]. The tracking number shows that the package was processed at 1:39 pm on 22-April-2023. The package was never picked up and returned to sender.

17. The landlord stated that they believe the tenant received this notice in her regular mail as it was also sent that way and she contacted their office afterwards to make arrangements for rent payment, however this did not occur.

Analysis

18. 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.

....

19. 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. However the notice does not meet the service requirements. The package tracking number shows that the package was processed on 22-April-2023, thereby being considered delivered on 27-April-2023 in accordance with Section 42 (6) of the *Residential Tenancies Act, 2018*. The tenant is entitled to 10 clear days' notice, a package that is considered served on 27-April-2023 only gives 8 days' notice for a 05-May-2023 termination date.
20. The termination notices does not meet the timelines required in the *Act* and therefore fails.

Decision

21. The landlord's claim for an order for vacant possession fails

Issue 3: Hearing expenses reimbursed \$20.00

22. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

23. The tenant shall:

- Pay the landlord \$2,542.70 as follows:
 - Rent \$2,542.70
 - Hearing expenses 20.00
 - Total \$2,542.70

The landlord's termination notice with a termination date of 05-May-2023 is not valid.

July 24, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office