



Residential Tenancies Tribunal

Application 2023-0546-NL

Decision 23-0546-00

Pamela Pennell
 Adjudicator

Introduction

1. Hearing was called at 9:20 a.m. on 11-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. 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 2 separate affidavits with their application stating that they served respondent 1 and respondent 2 with the notice of hearing via prepaid registered mail; [REDACTED] and [REDACTED] respectively on 20-June-2023 (LL#1 & 2)). Canada Post tracking shows that delivery to respondent 1 was successful however respondent 2 never retrieved the mail (LL#3 & 4)). In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. 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's representative stated that there is a written month to month rental agreement which originally commenced on 10-April-2007 (LL#5). The current rental agreement was updated on 1-February-2014 and rent is \$263.00 per month, due on the first day of each month. The landlord's representative states that a security deposit was never paid.

6. The landlord amended the application to increase rent from \$1089.00 as per the application to \$1352.00 to include outstanding rent that has come due since the filing of the application. The landlord is seeking hearing expenses reimbursed.

Issues before the Tribunal

7. The landlord is seeking:
- Rent paid \$1352.00
 - Vacant possession of rental premises
 - Hearing expenses \$20.00

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.

Issue # 1: Rent Paid \$1352.00

Relevant Submissions

10. The landlord testified that rent was outstanding in the amount of \$1352.00 and in support of the claim submitted a rental ledger (LL#6) as follows:

Date	Transaction Description	Debit	Credit	Balance
	Opening balance			80.00 CR
01-JAN-23	Periodic Debit	263.00		183.00
01-FEB-23	Periodic Debit	263.00		446.00
01-MAR-23	Periodic Debit	263.00		709.00
01-MAR-23	Periodic Debit	263.00		972.00
03-MAR-23	Debit adjustment PDEB Re		263.00	709.00
01-APR-23	Periodic Debit	263.00		972.00
17-APR-23	Auto Adj modify Credit Agre		652.00	320.00
17-APR-23	Auto Adj modify Debit Agre	163.00		483.00
01-MAY-23	Periodic Debit	263.00		746.00
01-JUN-23	Periodic Debit	263.00		1009.00
09-JUN-23	Transfer From Account	80.00		1089.00
01-JUL-23	Periodic Debit	263.00		1352.00

Analysis

11. With regards to respondent 1, the landlord testified that he has not lived in the unit for 2 years. When asked why she is seeking rent from him at this point, she responded that his possessions are still in the unit.

12. With regards to respondent 2, the landlord testified that respondent 2 received a court order in July 2022 to stay away from the premises. The landlord's representative testified that respondent 2 was [REDACTED] Her possessions remained in the unit and the landlord's representative stated that she was unsure if the tenants would be returning.

13. Once a court order is issued that prevents a tenant(s) from occupying a unit, the rental agreement becomes null and void. I find that the tenants are not responsible for the outstanding rent as the court order was issued in July 2022 and the last rent payment was 5 months after that date. I find that it was the responsibility of the landlord to mitigate their losses for which proof has not been provided.

14. I find the tenants are not responsible for the outstanding rent.

Decision

15. The landlord's claim for rental arrears does not succeed.

Issue # 2: Vacant Possession of Rented Premises

Relevant submissions:

16. The landlord submitted a termination notice under Section 19; Notice of failure to pay rent. The notice was signed and dated for 7-June-2023, with a termination date of 30-June-2023 (LL#7).

Analysis

17. Section 19 of the *Residential Tenancies Act, 2018* states:

a. Notice of 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.

18. The landlord gave a notice on 7-June-2023⁴ to vacate on 30-June-2023 when they knew that both tenants were not living in the unit and had not lived there for months. When asked why they gave the notice as opposed to taking back their unit and mitigating their losses, the landlord's representative responded that she wasn't sure if they would be permitted to return and she stated that there was a recent order not to return.
19. I find that the termination notice is not valid as the tenants were not living in the unit at the time the notice was given. The landlord can take back their unit by utilizing Section 31 of the *Residential Tenancies Act, 2018*.

Decision

20. The landlord's claim for an order for vacant possession does not succeed.

Issue # 3: Hearing Expenses

21. The landlord paid an application fee of \$20.00 (LL#7). As the landlord's claim has not been successful, the tenants do not have to pay the \$20.00. The landlord's claim for hearing expenses does not succeed.

Summary of Decision

22. The landlord's claim for payment of rent does not succeed
23. The landlord's claim for vacant possession does not succeed
24. The landlord's claim for hearing expenses does not succeed

July 20, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office