



Residential Tenancies Tribunal

Application 2023-0574-NL

Decision 23-0574-00

Pamela Pennell
 Adjudicator

Introduction

1. Hearing was called at 1:57 p.m. on 19-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.
4. [REDACTED] (respondent 3), hereinafter referred to as "the tenant" has been added to the application as he was listed as a tenant on the termination notice and he was properly served the document for notice of hearing. He did not attend.

Preliminary Matters

5. 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 3 separate affidavits with his application stating that he served respondent 1, respondent 2, and respondent 3 with the notice of hearing electronically via email to [REDACTED] and [REDACTED] respectively on 4-July-2023 (LL#1, 2 & 3). The landlord submitted proof of sent emails and proof of email addresses. 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.

6. The landlord stated that there is a written ² term rental agreement which commenced on 1-February-2023 (LL#4). Rent is \$1875.00 per month, due on the first day of each month. A security deposit of \$600.00 was paid on 23-Janaury-2023.
7. The landlord amended the application to add rent for the month of July and to have the security deposit applied against payment owed. The landlord is seeking hearing expenses reimbursed.

Issues before the Tribunal

8. The landlord is seeking:
- Rent paid \$1966.20
 - Security deposit applied against payment owed \$600.00
 - Vacant possession of rental premises
 - 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 and Section 14; Security Deposit.

Issue # 1: Rent Paid \$1966.20

Relevant Submissions

11. The landlord testified that rent is outstanding in the amount of \$1966.20 and in support of the claim submitted a rental ledger (LL#5) as follows:

Rent Ledger
Monthly rent = \$1875
5 months total, February, March, April, May, June
 $\$1875 \times 5 = \9375
to date June 13 2023 \$7408.80 recieved
 $\$9375 - \$7408.80 = \$1966.20$

Analysis

12. Non-payment of rent is a violation of the rental agreement. The landlord testified that rent has never been paid in full since the tenancy began in February 2023. He stated that the tenants did pay \$1875.00 for the month of July.
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 tenants are responsible for outstanding rent dating back as far as February 1, 2023 (tenancy commenced) to 30-June-2023 in the amount of \$1966.20 and rent from 1-July to 19-July in the amount of \$1171.16 less a payment of \$1875.00 that was made in July for a total of \$1262.36 then a daily rate shall apply as calculated below:

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Date	Action	Amount	Total
February 1, 2023	Rent due	\$1,875.00	\$1,875.00
March 1, 2023	Rent due	\$1,875.00	\$3,750.00
April 1, 2023	Rent due	\$1,875.00	\$5,625.00
May 1, 2023	Rent due	\$1,875.00	\$7,500.00
June 1, 2023	Rent due	\$1,875.00	\$9,375.00
as of June 13, 2023	Total payments	-\$7,408.80	\$1,966.20
July 1-19, 2023	Rent due	\$1,171.16	\$3,137.36
July 1, 2023	Payment	-\$1,875.00	\$1,262.36

$$\begin{aligned}\text{Daily rate} &= \$1875 \times 12 = \$22500 \\ \$22500 / 365 &= \$61.64 \text{ per day}\end{aligned}$$

14. I find the tenants shall pay the landlord \$1262.36 in outstanding rent for the period of 1-February to 19-July and then a daily rate of \$61.64 shall be applied.

Decision

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

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 13-June-2023, with a termination date of 24-June-2023 (LL#6).

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 ⁴month 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 tenants were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 24-June-2023 the tenants were still in arrears. The termination notice meets the requirements of the Act and is a valid notice.

19. I find the tenants should have vacated the premises by 24-June-2023.

Decision

20. The landlord's claim for an order for vacant possession succeeds.

21. The tenants shall vacate the premises immediately

22. The tenants 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 tenants shall pay a daily rate for rent beginning 20-July-2023 in the amount of \$61.64 a day as outlined in paragraph 14, until such time as the landlord regains possession of the property.

Issue # 3: Security Deposit applied against Payment Owed \$600.00

24. The landlord's claim for losses has been successful as per paragraph 14, and he shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

Decision

25. The landlords' claim to retain the security deposit of \$600.00 against monies owed succeeds.

Issue # 4: Hearing Expenses

26. The landlord paid an application fee of \$20.00 (LL#7). As the landlord's claim has been successful, the tenants shall pay the \$20.00. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

27. The tenants shall:

Pay the landlord \$682.36 as follows:

Rent	\$1262.36
Hearing expenses	\$20.00
Less: Security Deposit	<u>(600.00)</u>
Total	<u>\$682.36</u>

28. Vacate the property immediately
29. Pay a daily rate for rent beginning 20-July-2023 in the amount of \$61.64 a day until such time as the landlord regains possession of the property.
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 24, 2023 _____
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office