

Residential Tenancies Tribunal

Application 2023-0578-NL

Decision 23-0578-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 2:07 p.m. on 21-August-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 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 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 with his application stating that he had served the tenant with the notice of hearing, electronically by emailing to [REDACTED] on 21-July-2023 (LL#1). The landlord provided proof of sent email to the address provided on the rental agreement (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 tenant resides in the basement apartment of a 2 apartment house. There is a written month to month rental agreement which commenced on 1-July-2021 (LL#3). Rent is \$550.00 per month due on the first of each month. A security deposit of \$300.00 was paid on 1-July-2021 and is still in the possession of the landlord.

Issues before the Tribunal

6. The landlord is seeking:
 - An order of Vacant Possession of the rented 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 19: Notice where failure to pay rent.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

9. The landlord submitted a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 19-June-2023, with a termination date of 1-July-2023 (LL#4).

Landlord's Position:

10. The landlord testified that the tenant has an outstanding rental balance of \$1115.00 dating back to May 2023 and he submitted a rental ledger to support his claim (LL#5). The landlord feels that the tenant should have vacated the premises by 1-July-2023.

Analysis

11. 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.

12. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 1-July-2023 the tenant paid \$300.00 which left a balance of \$1115.00 once rent was added for the month of July. As rent was still in arrears on the termination date, and as the tenant was not available to dispute the claim, I find that the termination notice meets the requirements of the Act and is a valid notice.
13. I accept the landlord's testimony that the tenant has outstanding rental arrears since May 2023.
14. I find the tenant should have vacated the property by 1-July-2023.

Decision

15. The landlord's claim for an order for vacant possession of the rented premises succeeds.
16. The tenant shall vacate the premises immediately.
17. 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.

Issue # 2: Hearing Expenses - \$20.00

18. The landlord paid an application fee of \$20.00 to the Landlord Tenancies Board and provided a copy of the receipt (LL#6).
19. As the landlord's claim has been successful, the tenant shall pay the \$20.00.

Decision

20. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

21. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- 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.
- The landlord may retain \$20.00 of the tenant's security deposit to cover the hearing expenses.

August 22, 2023

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office