

Residential Tenancies Tribunal

Application 2023-0613-NL

Decision 23-0613-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 11:09 a.m. on 9-August-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords” attended the hearing.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as “the tenants” attended the hearing.
4. The hearing was held via teleconference.

Preliminary Matters

5. There was a verbal *rent to own* agreement which commenced on 1-October-2019. This agreement was put into writing on 16-May-2022 (LL#1). Rent was \$1250.00 with \$500.00 going towards the purchase of the property which was scheduled to close on 31-January-2023. The sale of the house was unsuccessful and the parties verbally agreed to extend the *rent to own* agreement for an additional 3 months bringing the closing date to 30-April-2023. A summary of events was submitted from the landlord’s solicitor (LL2). According to Residential Tenancies Policy 1-8, Rent-To-Own (Option to Purchase), this agreement does not fall under this tribunal’s jurisdiction as the tenant’s held an interest in the property. The *rent to own* agreement is not covered by the *Residential Tenancies Act, 2018*.
6. Effective 1-May, 2023 the vendor purchaser relationship ended and a residential tenancies relationship began, as such this tribunal has jurisdiction over any disputes from the period of 1-May-2023 to present.
7. The landlord’s and tenant’s verbally agreed to enter into a residential tenancies relationship effective 1-May-2023 when it was determined that the sale would not go through. Rent is currently \$1400.00 per month due on the first of each month. A security deposit was paid on 3-September-2019 in the amount of \$650.00 (LL#3).

8. The landlord's submitted 2 affidavits with their application stating that they served respondent 1 with the notice of hearing personally on 26-July-2023 at the residential premises and they served respondent 2 personally on 26-July-2023 by giving the document to a person 16 years or older who resides at the residential premises (LL#4). The tenant's confirmed receiving the documents. In accordance with the *Residential Tenancies Act, 2018* this is good service.
9. The landlord's amended the application to increase rent from \$2800.00 as per the application to \$4200.00 to include outstanding rent for August 2023. The landlord is seeking hearing expenses reimbursed.

Issues before the Tribunal

10. The landlords are seeking:
 - a. Rent paid \$4200.00
 - b. Vacant possession of rental premises
 - c. Late fees \$75.00
 - d. Security deposit applied against payment owed \$650.00
 - e. Hearing expenses \$20.00

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
12. 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, Section 14; Security deposit and Section 15; Fee for failure to pay rent.

Issue # 1: Rent Paid \$4200.00

Relevant Submissions

13. The landlord's testified that rent was outstanding in the amount of \$4200.00 and in support of the claim submitted a rental ledger (LL#5) as follows:

2023-0613-NL			
Date	Action	Amount	Total
May 31, 2023	Balance		\$0.00
June 1, 2023	Rent due	\$1,400.00	\$1,400.00
July 1, 2023	Rent due	\$1,400.00	\$2,800.00
August 1, 2023	Rent due	\$1,400.00	\$4,200.00

Landlord's Position

14. The landlord's testified that rent is outstanding for the months of June, July and August 2023 and is seeking \$4200.00.

Tenant's Position

15. The tenant's did not dispute that rent was outstanding since 1-June-2023. The tenant's stated that they do not agree that they should have to pay \$1400.00 per month as they did not receive a proper notice to increase rent from \$1250.00 to \$1400.00.

Analysis

16. I accept the tenant's position that the rent should not have been increased from \$1250.00 to \$1400.00 per month without a proper 6 month notice as per Section 16.3(b) of *the Act*, however the residential tenancy relationship did not commence until 1-May-2023 when both parties discontinued the vendor purchaser relationship. As such, the landlords were not required to give any notice to increase rent. The verbal agreement to pay \$1400.00 per month at the beginning of the rental period is legally binding.
17. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony that there is rental arrears in the amount of \$4200.00 for the period of 1-June to 31-August-2023, however this tribunal doesn't consider future rent. An amended rental ledger shows a daily rate for August (see below);

	2023-0613-NL		
Date	Action	Amount	Total
May 31, 2023	Balance		\$0.00
June 1, 2023	Rent due	\$1,400.00	\$1,400.00
July 1, 2023	Rent due	\$1,400.00	\$2,800.00
August 1-9, 2023	Rent due	\$414.27	\$3,214.27

$$\begin{aligned}\text{Daily rate} &= \$1400 \times 12 = \$16800 \\ \$16800 / 365 \text{ days} &= \$46.03\end{aligned}$$

18. I find that the tenants are responsible for outstanding rent for June and July in the amount of \$2800.00 and rent from 1-August to 9-August in the amount of \$414.27 for a total of \$3214.27 then a daily rate shall apply as calculated above.
19. I find the tenant's shall pay the landlords \$3214.27 in outstanding rent for the period of 1-June to 9-August, 2023 and then a daily of rate of \$46.03 shall be applied.

Decision

20. The landlord's claim for rental arrears succeeds in the amount of \$3214.27

Issue # 2: Vacant Possession of the Rented Premises

Relevant submissions:

21. The landlord's submitted a termination notice under Section 19; Notice of failure to pay rent. The notice was signed and dated for 24-June-2023, with a termination date of 5-July-2023 (LL#6).

Analysis

22. 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.*

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

24. I find the tenant's should have vacated the premises by 5-July-2023.

Decision

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

26. The tenant's shall vacate the premises immediately

27. The tenant's shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord's be required to have the Sheriff enforce the attached Order of Possession.

Issue # 3 Late Fees \$75.00

28. The landlords are seeking late fees in the amount of \$75.00.

Analysis

29. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00

Decision

30. The maximum rate of \$75.00 is allowable.

Issue # 4: Security deposit applied against payment owed \$650.00

31. The landlord's claim for losses has been successful as per paragraph 19, and they 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

32. The landlords' claim to retain the security deposit of \$650.00 against monies owed succeeds.

Issue # 5: Hearing Expenses

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

Summary of Decision

34. The tenant's shall:

Pay the landlord's \$2659.27 as follows:

- Rent..... \$3214.27
- Late fees 75.00
- Hearing expenses 20.00
- Less: security deposit (650.00)

Total \$2659.27

35. Orders that the tenants pay a daily rate of rent beginning 10-August-2023 of \$46.03, until such time as the landlord's regain possession of the property.

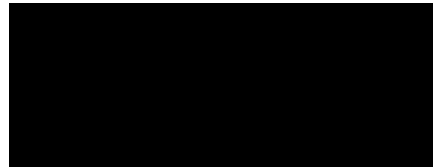
36. Vacate the property immediately

37. Pay to the landlord's any costs charged to the landlord by the Office of the High Sheriff should the landlord's be required to have the Sheriff enforce the attached Order of Possession.

38. The landlord's will be awarded an Order of Possession.

August 15, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office