

Residential Tenancies Tribunal

Application 2023-0657-NL

Decision 23-0657-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was call at 11:17 AM on August 15, 2023 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her by telephone ([REDACTED] at 11:03 AM) at the start of the hearing. At 11:06 AM, I attempted to reach the tenant by telephone ([REDACTED]) at which time an unknown female provided an additional contact telephone number for the tenant. At 11:09 AM, I was unsuccessful in contacting the tenant ([REDACTED] by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court*, 1988. 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 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 he has been properly served. The landlord submitted an affidavit with her application stated that she served the tenant, by electronic mail ([REDACTED]) on July 28, 2023. 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 his absence.

5. The landlord stated that there was a written fixed rental agreement which commenced on 21 April 2016 (LL#1), which is now a month to month agreement. Rent is currently \$752.00 effective 1 July 2023, and is due on the first of each month. Rent is subsidized by NL Housing Corporation, with the tenant paying \$752.00 per month. The landlord stated there is no security deposit as the policy of NL Housing Corporation does not require a security deposit.
6. The landlord amended her application at the hearing and is seeking the cost of the application fee for the hearing and cost of the registered mail.

Issues before the Tribunal

7. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$2,203.63
 - An order of eviction and possession of property
 - An order for payment of application fees of \$20.00
 - An order for payment of courier mail service of \$28.85

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 case is S. 15, 19, 34 and 35 of the *Residential Tenancies Act*, 2018, and rule 29 of the *Rules of the Supreme Court*, 1986.

Issue 1: Rent Owing- \$2,203.63

10. The landlord testified that rent is outstanding in the amount of \$2,203.63 and the tenant has carried forward arrears in rent since 1 July 2021 (LL#2). The landlord summarized the tenant's payment of rent has not been consistent and untimely. The landlord submitted an additional rental ledger (LL#3) to support of this claim as follows:

Date		Rent	Paid	Balance
1 April 2023	Rental Arrears			\$2,259.63
3 April 2023	Payment		\$650.00	\$1,609.63
1 May 2023	Monthly Rent	\$645.00		\$2,254.63
5 May 2023	Payment		\$1,200.00	\$1,054.63
1 June 2023	Monthly Rent	\$645.00		\$1,699.63
1 July 2023	Monthly Rent	\$752.00		\$2,451.63
26 July 2023	Payment		\$1,000.00	\$1,451.63
1 August 2023	Monthly Rent	\$752.00		\$2, 203.63

Analysis

11. Non-payment of rent is a violation of the rental agreement. The landlord states there are rental arrears in the amount of \$2,203.63 for the month of August 2023. Rent is required to be paid in full by the tenant for the use and occupation of the rented premises, rent currently owed to the landlord is \$2,203.63.
12. I find the tenant shall pay the landlord \$2,203.63 in outstanding rental arrears up until 31 August 2023.
13. I accept the landlord's claim that the tenant has not paid rent as required. I also accept her records which show that the tenant owes \$2,203.63 in rental arrears.

Decision

14. The landlord's claim for a payment of the rental arrears succeeds in the amount of \$2,203.63.

Issue 2: Vacant Possession of Rented Premises

15. The landlord submitted termination Notice under Section 19, notice where failure to pay rent. The notice was signed and dated on June 7, 2023, with a request for rental arrears to be paid in full in the amount of \$1,699.63 (LL# 4).

Analysis

16. 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.

17. The tenant was in rental arrears in excess of the 5 days when the notice was served on 7 June 2023. The rental ledger shows that a payment of \$1000.00 was paid on 26 July 2023 leaving the tenant with a credit balance of \$1,451.63. The termination notice would have had to be issued to address any arrears after 31 July 2023. The tenant also remains in the property and has been charged additional rental payment for August 2023 in the amount of \$752.00. The termination notice is not a valid notice.

18. I find the termination notice is not a valid notice.

Decision

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

Issue 3: Hearing Expenses- \$48.85

20. The landlord paid an application fee of \$20.00. Also, the landlord incurred postal costs in the amount of \$28.84 to serve the respondent (LL# 5).

Decision

21. The landlord's claim for hearing expenses succeeds in the amount of \$48.85.

Summary of Decision

17. The landlord is entitled to the following:

- A payment of \$470.00, as determined as follows:
 - a) Rent owing\$2,203.63
 - b) Hearing expenses.....\$48.85
 - c) Total.....\$2,252.48

August 24, 2023
Date

