

Residential Tenancies Tribunal

Application 2023-0667-NL

Decision 23-0667-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:00 AM on August 23, 2023 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED] hereinafter referred to as “the landlord”, attended the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenant”, attended the hearing.
4. The details of the claims were presented as a written agreement with rent set at \$1,694.00 and due on the 1st of each month. There was no security deposit collected on this tenancy, the current rental agreement was monthly, and [REDACTED] has resided at [REDACTED] since 20 August 2010 (LL#1). In 2020, [REDACTED] was added to the rental agreement (LL# 2). The landlord issued a termination notice on 13 July 2023 to terminate the tenancy on 26 July 2023 under section 19 of the *Residential Tenancies Act*, 2018 (LL#3). The tenants were served via prepaid registered mail, an application for dispute resolution related to rental arrears outstanding (LL# 4).
5. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The landlord amended her application at the hearing decreasing the rental arrears owing (\$9,124.54).

Issues before the Tribunal

8. The landlord is seeking the following:
- An order for payment of rent in the amount of \$9,124.54;
 - An order for vacant possession of the rented premises; &
 - An order for payment of hearing expenses;

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 case is S. 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- \$9,124.54

11. The landlord stated that there is a written monthly rental agreement established with the tenant and that the tenant has occupied the rental premises since 20 August 2010. A copy of the rental agreement was submitted by the landlord (LL#1).
12. The landlord summarized the tenant's payment of rent has not been consistent and untimely and provided evidence of a continuation of rental arrears outstanding and accumulating (LL#6). The landlord provided testimony regarding the tenants' failure to provide updated financial information as a means to determine appropriate rental amounts as based on the policies of [REDACTED].
13. The landlord offered testimony that rent is currently outstanding in the amount of \$9,124.54 and rental arrears have been in place with the tenants since 1 May 2022.
14. The landlord submitted an updated rental ledger (LL#5) regarding rental arrears between July 2023 and August 2023:

Date	Action	Credit	Balance
4 July 2023	Payment	\$100.00	\$9,912.51
7 July 2023	Payment	\$300.00	\$9,612.51
13 July 2023	Payment	\$200.00	\$9,412.51
20 July 2023	Payment	\$300.00	\$9,112.51
31 July 2023	Payment	\$350.00	\$8,762.51
1 August 2023	Rent Due- \$1,694		\$10,456.51
3 August 2023	Payment	\$300.00	\$10,156.51
15 August 2023	M/A Rent Abatement (cr)	\$1,032.00	\$9,124.51

Analysis

15. Non-payment of rent is a violation of the rental agreement. The landlord has amended the claim at the outset to add rent to include rent up until August 2023. This tribunal does not consider future rent.
16. The landlord submitted a termination Notice under Section 19, notice where failure to pay rent with a requested possession of the premises by 26 July 2023 (LL#1). As such, rent was due 1 July 2023 (\$1,694.00) and included to the balance of rental arrears owing by the tenant equaling **\$8,762.51** including up to 31 July 2023.
17. Rent for August 2023 can only be calculated up to and including the day of the hearing (23 August 2023). That calculation is $(\$1,694.00 \times 12 \text{ months} = \$20,328.00 \div 365 \text{ days} = \$55.69 \text{ per day} \times 23 \text{ days} = \$1,280.87)$. Rent for 1 August 2023 – 23 August 2023 is **\$1,280.87**.
18. I accept the landlord's claim that the tenant has not paid rent as required. The tenant owes **\$8,711.38**. That calculation is $(\$8,762.51 + \text{rent for 1 August 2023 to 23 August 2023, } \$1,280.87 = \$10,456.51 - \$300.00 \text{ payment on 3 August 2023} - \$1,032.00 \text{ payment on 15 August 2023} = \$8,711.38)$. Current Balance of rental arrears is **\$8,711.38**.
19. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$ 55.69** beginning on 24 August 2023 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

20. The landlord's claim for a payment of the rent succeeds in the amount of **\$8,711.38**.

Issue 2: Vacant Possession of Rented Premises

21. The landlord submitted termination Notice under Section 19, notice where failure to pay rent. The notice was signed and dated on 13 July 2023 and requested possession of the premises by 26 July 2023 (LL# 3).

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 tenant was in rental arrears in excess of the 5 days when the notice was served on 13 July 2023 to be out of [REDACTED] on 26 July 2023 (LL#1). The tenant remains in the property following being issued the notice to vacate and has been charged additional rental payments for July and August 2023. The termination notice is a valid notice.

24. I find the termination notice is a valid notice.

Decision

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

Issue 3: Hearing Expenses- \$34.15

26. The landlord paid an application fee of \$20.00 (LL#6). As well, the landlord incurred posts costs in the amount of \$14.15 to serve the respondent (LL#7).

Decision

27. As the landlord's claim has been successful, the tenant shall pay the landlord's hearing expense of **\$34.15** for the costs of filing this application.

Summary of Decision

28. The landlord is entitled to the following:

- A payment of **\$2,523.95**, as determined as follows:
 - a) Rent owing\$8,711.38
 - b) Hearing expenses.....\$34.15
 - c) Total.....**\$8,745.53**
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$55.69, beginning by 24 August 2023 and continuing to the date the landlord obtains vacant possession of the rental unit,
- The tenant shall also 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.

30 August 2023

Date


Michael J. Reddy
Residential Tenancies Office