

Residential Tenancies Tribunal

Application 2023-0682-NL

Decision 23-0682-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:02 PM on August 23, 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondents, [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing (*Absent and Not Represented*).
4. The details of the claims were presented as an oral agreement with rent set at \$700.00 and due on the 1st of each month. There was no security deposit collected on this tenancy, the current rental agreement was monthly, and the tenant has resided at [REDACTED] since October 2021. The landlord issued a termination notice on 28 July 2023 to terminate the tenancy on 8 August 2023 under section 19 of the *Residential Tenancies Act*, 2018 (LL#1). The tenants were served electronically, an application for dispute resolution related to rental arrears outstanding (LL# 2).
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 the application at the hearing to add rent that has come due since the filing of the application. The new amount outstanding is **\$1400.00** up to and including 31 August 2023.
7. The tenant was not present or represented at the hearing. This tribunal's policies concerning notice requirements and hearing attendance has been adopted from the Rules of the Supreme Court, 1986.

a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, 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/she has been properly served.*

8. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing **8 August 2023** by serving the original documents to the tenant electronically on Facebook Messenger (LL# 2).

The tenant had **14 days** to provide a response.

A telephone call was placed to the tenant to the number on file ([REDACTED]) at 1:52 PM on 23 August 2023. There was no answer.

9. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings could unfairly disadvantage the landlord application, I proceeded in the tenant's absence.

Issues before the Tribunal

10. The landlord is seeking the following:
 - An order for payment of rent in the amount of **\$1,400.00**; &
 - An order for vacant possession of the rented premises.

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

Issue 1: Rent Owning- \$1,400.00

13. The landlord stated that there is an oral monthly rental agreement established with the tenant and that the tenant has occupied the rental premises since October 2021.
14. The landlord offered testimony that rent is outstanding in the amount of \$1,400.00 and the tenant has carried forward in rental arrears since 1 July 2023. The landlord summarized the tenant's payment of rent has not been consistent and provided evidence of rental arrears beginning on 5 July 2023 (LL# 2).

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 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 (\$700.00) and included to the balance of rental arrears owing by the tenant equaling **\$700.00** 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 ($\$700.00 \times 12 \text{ months} = \$8,400.00 \div 365 \text{ days} = \$23.01 \text{ per day} \times 23 \text{ days} = \529.23). Rent for 1 August 2023 to 23 August 2023 is **\$529.23**.
18. I accept the landlord's verbal testimony that the tenant has not paid rent as required. The tenant owes **\$1,229.23** in rental arrears.
19. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$23.01** 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 **\$1,229.23**.

Issue 2: Vacant Possession of Rented Premises

The landlord submitted termination Notice under Section 19, notice where failure to pay rent. The notice was signed and dated on 28 July 2023 and requested possession of the premises by 8 August 2023 (LL# 1).

Analysis

21. 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.*

22. 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]. 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.

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

Decision

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

Issue 3: Hearing Expenses- \$20.00

25. The landlord paid an application fee of \$20.00 (LL#3).

Decision

26. As the landlord's claim has been successful, the tenant shall pay her hearing expense of **\$20.00** for the costs of filing this application.

Summary of Decision

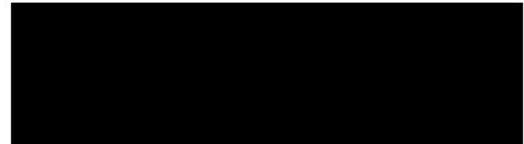
27. The landlord is entitled to the following:

- A payment of **\$1,249.23**, as determined as follows:

a) Rent owing	\$1229.23
b) Hearing expenses	<u>20.00</u>
c) Total	<u>\$1249.23</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$23.01, 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.

29 August 2023

Date



Michael J. Reddy
Residential Tenancies Office