

Residential Tenancies Tribunal

Application 2023-0696-NL

Decision 23-0696-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on August 28, 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 attended the hearing.
4. The details of the claims were presented as a written monthly rental agreement with rent set at \$1,200.00, due on the 1st of each month. There was a security deposit collected on this tenancy in the amount of \$900.00 on 20 November 2021, and still in possession of the landlord. The tenant has resided at [REDACTED] since 1 December 2021. The landlord issued a termination notice on 1 August 2023 to terminate the tenancy on 14 August 2023 under section 19 of the *Residential Tenancies Act, 2019* (LL#1). The tenant was served a copy of the Application for Dispute Resolution via registered mail on 9 August 2023 under section 19 of the *Residential Tenancies Act, 2018* (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 her application at the hearing and stated the rental arrears owed is \$3,600.00 and did not wish to seek hearing expenses.
7. The tenant was not present or represented at 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 of the 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 stating that she served the tenant a copy of the Application for Dispute Resolution, by registered mail, on 9 August 2023 (LL#3). As the tenant was properly served, and as further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

8. The landlord is seeking the following:

- An order for payment of rent in the amount of \$3,600.00; &
- An order for vacant possession of the rented premises;

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- \$3,600.00

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 December 2021.

12. The landlord summarized the tenant's payment of rent has not been consistent and untimely, resulting in rental arrears. The tenant was thought to be still residing in the residence on the date of the hearing (28 August 2023).

13. The landlord offered testimony that rent is currently outstanding in the amount of **\$3,600.00** and in July 2023, the landlord had sent the tenant an e-mail regarding the rental arrears which were accumulating (LL#4).

14. The landlord submitted a rental ledger (LL# 5) regarding rental arrears between December 2021 and August 2023. By end of July 2023, the tenant was presented as owing **\$2,400.00** in rental arrears for both June and July 2023. The ledger presented by the landlord suggests the following information:

Date	Payment	Rent Due	Balance
1 June 2023	\$0	\$1,200.00	\$1,200.00
1 July 2023	\$0	\$1,200.00	\$2,400.00
1 August 2023	\$0	\$1,200.00	\$3,600.00

Analysis

15. Non-payment of rent is a violation of the rental agreement. The landlord offered testimony that the tenant remains in the residence on the date of the hearing (28 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 30 July 2023 (LL#2). As such, rent was due 1 July 2023 (\$1,200.00) and included to the balance of rental arrears owing by the tenant equaling **\$2,400.00** 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 $(\$1,200.00 \times 12 \text{ months} = \$14,400.00 \div 365 \text{ days} = \$39.45 \text{ per day} \times 28 \text{ days} = \$1,104.66)$. Rent for 1 August 2023 – 28 August 2023 is **\$1,104.66**.

18. I accept the landlord's claim that the tenant has not paid rent as required. The tenant owes **\$3,504.66**. Current Balance of rental arrears is **\$3,504.66**.

19. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$ 39.45** beginning on 29 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 **\$3,504.66**.

Issue 2: Vacant Possession of Rented Premises

21. The landlord submitted termination Notice under Section 18, notice where failure to pay rent. The notice was signed and dated on 12 July 2023 and requested possession of the premises by 14 August 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 tenant was in rental arrears in excess of the 5 days when the notice was served on 12 July 2023 to be out of [REDACTED] on 30 July 2023 (LL#6). The tenant remains in the property following being issued the notice to vacate and has been charged additional rental payments for 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.

Summary of Decision

26. The landlord is entitled to the following:

- A payment of **\$3,504.66** in rental arrears.
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of **\$39.45**, beginning by 29 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.

11 September 2023

Date

