

Residential Tenancies Tribunal

Application 2023-0702-NL

Decision 23-0702-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:46 PM on 28 August 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 tenants", attended the hearing.
4. The details of the claims were presented as a written rental agreement with rent set at \$950.00, due the 1st of each month (LL#1), which is now a monthly agreement since March 2023. The landlord stated a security deposit in the amount of \$675.00, was paid on 14 January 2022, and is still in the company's possession. The landlord issued termination notices:
 - in April 2023 to terminate the tenancy on 6 May 2023 under section 19 of the *Residential Tenancies Act, 2018* (LL#2);
 - on 8 May 2023, 2023 to terminate the tenancy on 19 May 2023 under section 19 of the *Residential Tenancies Act, 2018* (LL#3); and,
 - on 7 July 2023 to terminate the tenancy on 18 July 2023 under section 19 and section 24 of the *Residential Tenancies Act, 2018* (LL#4).

An application for dispute resolution was served electronically to the addresses ([REDACTED] and [REDACTED]) on 28 August 2023 (LL# 5).

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 is seeking an order of eviction and an order of possession of property of the rental address of [REDACTED].
7. The landlord did not make any amendments to her application during the hearing.

Issues before the Tribunal

8. The landlord is seeking the following:
 - An order for vacant possession of the rented premises;
 - Hearing expenses \$20.00

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 Section 19, 34 and 35 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

11. The landlord offered testimony on 25 April 2023, the tenants were issued a termination notice regarding failure to pay rent which was paid in full on 27 April 2023. On 8 May 2023, the landlord stated the tenants were issued a termination notice regarding failure to pay rent which was paid in full on 12 May 2023.
12. The landlord stated on 7 July 2023, the tenants were issued a termination notice regarding failure to pay rent which was paid in full on 18 July 2023.
13. The landlord testified on the date of the hearing (28 August 2023), the tenants did not have any rental arrears.

Analysis

14. The landlord offered evidence that on 27 April 2023, the tenants were issued a termination notice regarding failure to pay rent (LL# 2). Furthermore, evidence was offered suggesting on 8 May 2023, the tenants were issued a termination notice regarding failure to pay rent (LL#3). Also, evidence was provided by the landlord

suggesting on 7 July 2023 the tenants were issued a termination notice regarding failure to pay rent (LL#4).

15. 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.***
(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

16. The landlord offered testimony during the hearing, as specified in paragraph 13, that the tenants did not hold rental arrears on the date of the hearing (28 August 2023).

17. Section 19(3) of the *Residential Tenancies Act, 2018* further states:

Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period.

- 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.***
18. The landlord contacted the tenants electronically on 7 July 2023 in an attempt to resolve the outstanding rent, at that time (LL#5), prior to issuing a third termination notice.
19. A third termination notice was issued (LL#4).

20. The landlord provided evidence the tenants would not be willing to vacate the property (LL#6).
21. Section 19 of the *Residential Tenancies Act*, 2018 identifies direction regarding notice where failure to pay rent. The landlord issued notices in appropriate fashions, I find that Section 19(3) of the *Act* applies. As the tenants paid rent owing after each notice, nullification of termination notices does not apply as the tenants have been issued more than two notices in a 12 month period. After review of the evidence and testimony offered during the hearing, I find the termination notice is a valid notice.

Decision

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

Issue 2: Hearing Expenses- \$20.00

Relevant Submissions

23. The landlord paid an application fee of \$20.00 (LL#7).

Decision

24. As the landlord's claim has been successful, the tenants shall pay the landlord's hearing expense of **\$20.00** for the costs of filing this application.
25. The landlord indicated on the day of hearing (28 August 2023), the tenants did not hold any rental arrears. As such, the tenants are responsible for rent on a daily basis beginning on 29 August 2023. That calculation is ($\$950.00 \times 12 \text{ months} = \$11,400.00 \div 365 \text{ days} = \31.23).
26. Additionally, the tenants are responsible for rent on a daily basis in the amount of **\$31.23** beginning on **29 August 2023** and continuing until the day the landlord obtains vacant possession of the rented premises.

Summary of Decision

27. The landlord is entitled to the following:

- A payment of **\$20.00**, as determined as follows:
 - a) Hearing expenses.....\$20.00
 - b) Total.....**\$20.00**

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of **\$31.23**, 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

