

## Residential Tenancies Tribunal

Application 2023-0726-NL

Decision 23-0726-00

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 9:10 a.m. on 18-September-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], herein referred to as “the tenant” did not attend.

### Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the start of 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 hearing 10 clear days prior to the hearing date and, where the respondents fail 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 with his application stating that he had served the tenant with the notice of hearing via pre paid registered mail; ([REDACTED]) on 22-August-2023 (LL#1). Canada post tracking shows that the envelope was never picked up. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. 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 her absence.
5. There is a verbal month to month rental agreement which commenced on 22-March-2022 (LL#2). Rent is \$650.00 per month due on the fifteenth of each month. A security deposit of \$325.00 was paid on 5-May-2022 and is still in the possession of the landlord.
6. The landlord amended the application to decrease rent from \$1300.00 as per the application to \$950.00 to reflect a payment of \$1000.00 and to add rent of \$650.00 for September 2023.

## Issues before the Tribunal

7. The landlord is seeking:
  - a. Rent paid \$950.00
  - b. An order for Vacant possession of rented premises
  - c. Security deposit applied against monies owed \$325.00

## 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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent and Section 14: Security deposit.

## Issue # 1: Rent Paid \$950.00

### Relevant Submissions

10. The landlord testified that rent is outstanding in the amount of \$1300.00 and submitted a rental ledger to support their claim (LL#3). See ledger below:

### Rent Ledger

Landlord Name:		Start Date of Tenancy:	May 2022	
Tenant Name:		Security Deposit Paid:	\$325	
Rental Unit Address		Date Security Deposit Paid:	May 05, 2022	
Date	Description of Charges	Amount Due	Amount Paid	Balance
15-Jul-23	July Rent	\$650.00	\$0.00	\$650.00
15-Aug-23	August Rent	\$650.00	\$0.00	\$650.00

## Analysis

11. 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

12. Non-payment of rent is a violation of the rental agreement. The landlord testified that there were rental arrears in the amount of \$1300.00 when he made application and his amended ledger now has rent outstanding in the amount of \$950.00 after a payment of \$1000.00 was applied and rent for September is included. Rent is required to be paid by the tenant for the use and occupation of the rented premises.

13. The rental ledger is amended to show a daily rate for September as this tribunal doesn't consider future rent (see below). I find that the tenant is responsible for outstanding rent from 15-July to 18-September-2023 in the amount of \$385.49 and then a daily rate of \$21.37 shall apply as calculated below:

Amended Rental Ledger 2023-0726-NL			
Date	Action	Amount	Total
July 14, 2023	Balance		\$0.00
July 15, 2023	Rent due	\$650.00	\$650.00
August 15, 2023	Rent due	\$650.00	\$1,300.00
August 15, 2023	Payment	-\$1,000.00	\$300.00
September 15-18, 2023	Rent due	\$85.49	\$385.49

Daily rate:  $\$650 \times 12 \text{ mths} = 7800$   
 $\$7800 / 365 \text{ days} = \$21.37$

14. I find the tenant is responsible for outstanding rent in the amount of \$385.49 for the period of 15-July to 18-September, 2023.

### Decision

15. The landlord's claim for rent paid succeeds in the amount of \$385.49.

### Issue # 2: An Order for Vacant Possession of Rented Premises

#### Relevant submissions:

16. The landlord submitted a termination notice under Section 19; notice where failure to pay rent. The notice was signed and dated on 10-August-2023, with a termination date of 14-September-2023 (LL#4).

## Analysis

17. The tenant was in rental arrears in excess of the 5 days when the notice was served on 10-August-2023. On the date of termination, 14-September-2023 the tenant was still in arrears. In accordance with the *Residential Tenancies Act, 2018*, the termination notice meets the requirements of the Act and is a valid notice.

18. I find the tenant should have vacated the premises by 14-September-2023.

## Decision

19. The landlord's claim for an order for vacant possession of the rented premises succeeds.

20. The tenant shall vacate the premises immediately

21. The tenant shall 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

22. The landlord is granted an Order of Possession.

## Issue # 3: Security Deposit applied against monies owed \$325.00

## Analysis

23. The landlord's claim for losses has been successful as per paragraph 15, and he shall retain the security deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see *below*:

### Security deposit

14. (10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

## Decision

24. The landlords' claim to apply the security deposit against monies owed succeeds in the amount of \$325.00.

## Summary of Decision

25. The tenant shall pay the landlord \$60.49 as follows:

Rent .....	\$385.49
Less Security deposit .....	<u>(\$325.00)</u>

Total ..... \$60.49

26. Orders that the tenant pay a daily rate of rent beginning 19-September of \$21.37, until such time as the landlord regains possession of the property.

27. The tenant shall vacate the property immediately

28. The tenant shall 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. The landlord will be awarded an Order of Possession.

September 19, 2023

Date



Pamela Pennell  
Residential Tenancies Office