

Residential Tenancies Tribunal

Application 2023-0727-NL

Decision 23-0727-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:56 p.m. on 12-September-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2) did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them 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 they have been properly served. The landlord testified that he had served the tenants with the notice of hearing via pre paid registered mail; respondent 1 ([REDACTED]) and respondent 2 ([REDACTED]) on 21-August-2023 (LL#1). Canada post tracking shows that the envelopes were 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’s were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. There is a verbal month to month rental agreement which commenced on 1-July-2022. Rent is \$1200.00 per month due on the first of each month. A security deposit was not paid.

Issues before the Tribunal

6. The landlord is seeking:
 - a. Rent paid \$2800.000
 - b. An order for Vacant possession of rented premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.
9. The landlord amended his application to increase rent paid from \$1600.00 as per the application to \$2800.00 to include the month of September.

Issue # 1: Rent Paid \$2800.00

Relevant Submissions

10. The landlord testified that rent is outstanding in the amount of \$2800.00. See breakdown of outstanding rent below:

Rental Ledger 2023-0727-NL			
Date	Action	Amount	Total
June 30, 2023	Balance		\$0.00
July 1, 2023	Rent due	\$1,200.00	\$1,200.00
July 1, 2023	Payment	-\$800.00	\$400.00
August 1, 2023	Rent due	\$1,200.00	\$1,600.00
September 1, 2023	Rent due	\$1,200.00	\$2,800.00

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 are rental arrears in the amount of \$2800.00 dating back to 1-July-2023 (last zero balance). Rent is required to be paid by the tenants 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 tenants are responsible for outstanding rent from 1-July-2023 to 12-September-2023 in the amount of \$2073.40 and then a daily rate of \$39.45 shall apply as calculated below:

Amended Rental Ledger 2023-0727-NL			
Date	Action	Amount	Total
June 30, 2023	Balance		\$0.00
July 1, 2023	Rent due	\$1,200.00	\$1,200.00
July 1, 2023	Payment	-\$800.00	\$400.00
August 1, 2023	Rent due	\$1,200.00	\$1,600.00
September 1-12, 2023	Rent due	\$473.40	\$2,073.40

Daily rate: $\$1200 \times 12 \text{ mths} = \14400

$\$14400 / 365 \text{ days} = \39.45

14. I find the tenants are responsible for outstanding rent in the amount of \$2073.40 for the period of 1-July to 12-September, 2023.

Decision

15. The landlord's claim for rent paid succeeds in the amount of \$2073.40.

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 8-August-2023, with a termination date of 21-August-2023 (LL#2).

Analysis

17. The tenant was in rental arrears in excess of the 5 days when the notice was served on 8-August-2023. On the date of termination, 21-August-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 tenants should have vacated the premises by 21-August-2023.

Decision

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

20. The tenants shall vacate the premises immediately

21. The tenants 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.

Summary of Decision

22. The tenant's shall pay the landlord \$2073.40 for outstanding rent.

23. The tenant's shall pay a daily rate of rent beginning 13-September of \$39.45, until such time as the landlord regains possession of the property.

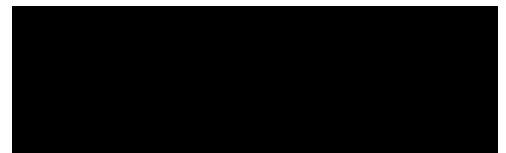
24. The tenant's shall vacate the property immediately

25. The tenant's 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.

26. The landlord will be awarded an Order of Possession.

September 18, 2023

Date



Pamela Pennell
Residential Tenancies Office