

Residential Tenancies Tribunal

Application 2023-0746-NL

Decision 23-0746-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 11:11 a.m. on 28-September-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference. Also present was [REDACTED].
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 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 with his application stating that he had served the tenant with the notice of hearing electronically by email to; [REDACTED] on 30-August-2023 (LL#1). The landlord submitted proof of sent email (LL#2) and proof that the email address used belonged to the tenant (LL#3). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 30-September-2022. The rental unit is an apartment within a building with 4 other apartments. Rent is \$1000.00 per month due on the first of each month. A security deposit of \$500.00 was paid on 30-September-2022 and is still in the possession of the landlord.
6. The landlord amended the application to increase rent from \$200.00 as per application to \$1250.00 and to apply the security deposit of \$500.00 against any monies owed. The landlord is seeking reimbursement of hearing expenses in the amount of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Rent paid \$1250.00
 - b. An order for vacant possession of rented premises
 - c. Security deposit applied against monies owed \$500.00
 - d. Hearing expenses \$20.00

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 10; Statutory conditions, Section 19: Notice where failure to pay rent and Section 14: Security deposit. .

Issue # 1: Rent Paid \$1250.00

Relevant Submission

10. The landlord testified that rent is outstanding in the amount of \$1250.00 and submitted a rental ledger to support his claim (LL#4). See breakdown of ledger below:

Rental Ledger 2023-0746-NL			
Date	Action	Amount	Total
October 30, 2022	Balance	\$50.00	
July 1, 2023	rent due	\$1,000.00	\$1,050.00
July 1, 2023	Payment	-\$800.00	\$250.00
August 1, 2023	rent due	\$1,000.00	\$1,250.00
August 1, 2023	Payment	-\$1,000.00	\$250.00
September 1, 2023	rent due	\$1,000.00	\$1,250.00

Landlord's Position

11. The landlord testified that the tenant owed \$50.00 in rent dating back to October 2022 and other than that rent was paid in full each month, although usually late until July 2023 when the tenant paid \$800.00 leaving a balance of \$250.00. The landlord testified that rent was paid in full for August 2023 and he has not received any rent for the month of September 2023. The landlord stated that he is seeking \$1250.00 in outstanding rent.

Analysis

12. 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

13. Non-payment of rent is a violation of the rental agreement. The landlord testified that there were rental arrears in the amount of \$1250.00. Rent is required to be paid by the tenant for the use and occupation of the rented premises.

14. 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 1-October-2022 to 28-September-2023 in the amount of \$1170.64 and then a daily rate of \$32.88 shall apply as calculated below:

Amended Rental Ledger 2023-0746-NL			
Date	Action	Amount	Total
October 30, 2022	Balance	\$50.00	
July 1, 2023	rent due	\$1,000.00	\$1,050.00
July 1, 2023	Payment	-\$800.00	\$250.00
August 1, 2023	rent due	\$1,000.00	\$1,250.00
August 1, 2023	Payment	-\$1,000.00	\$250.00
September 1-28, 2023	rent due	\$920.64	\$1,170.64

Daily rate: $\$1000 \times 12 \text{ mths} = 12000$
 $\$12000 / 365 \text{ days} = \32.88

15. I find the tenant is responsible for outstanding rent in the amount of \$1170.64 for the period of 1-October-2022 to 28-September, 2023.

Decision

16. The landlord's claim for rent paid succeeds in the amount of \$1170.64.

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

Relevant submission:

17. The landlord submitted a termination notice under Section 24; peaceful enjoyment. The notice was dated for 19-July-2023, with a termination date of 25-July-2023 (LL#5).

Landlord's Position

18. The landlord testified that the tenant has been disrupting the peaceful enjoyment and privacy of the other tenants at the premises. The landlord stated that there are 5 apartments within the unit all within close proximity of each other. The landlord testified that one of his best tenants has given a notice to vacate as he is terrified and he refused to give testimony as he is scared of retaliation.
19. The landlord provided written witness affidavits from the other 3 tenants whom he stated are also terrified but do wish to come forth with their testimonies.
20. Witness #1 testified that on 11-June-2023 at 2:20pm he heard a noise coming from his bedroom. A young man was entering his bedroom through the window. The tenant testified that he asked the intruder what he was doing and his response was; "Is this [REDACTED]'s". The tenant stated in his witness affidavit that he is very nervous living there now and he has to keep his windows and door locked at all times. The tenant also testified that he had to disconnect his doorbell as people were constantly ringing it looking for the respondent at all hours of the night.
21. Witness # 2 testified that since the respondent moved into the building, there has been several instances whereby individuals knock on doors and windows looking for the respondent. Those individuals call out the respondents name from the parking lot. The tenant stated that having random people looking in the windows is unnerving and makes him feel unsafe in his own home.
22. Witness # 3 testified that she has had many people knocking at her door at all hours looking for the respondent. She stated that she has witnessed exchanges between the respondent and others which she believes to be drug transactions. The tenant testified that she has seen people try to kick in the door looking for the respondent. The tenant stated that as a senior citizen, she finds the situation to be very disturbing and she do not feel safe in her own home.
23. In addition to the witness statements, the landlord added that on 11-June-2023 when the man entered witness 1's bedroom, he climbed up the electrical mask of the building and pulled the mask of the side of the building which put the lives of the other tenant's in danger. The landlord states that this could have caused a fire and even electrocution.
24. The landlord stated that the people that the tenant brings around or comes around looking for her interferes with the peaceful enjoyment and reasonable privacy of the other 4 tenants in the building and it is not fair to them to be scared in their own spaces. The tenant states that it was difficult for him to lose his best tenant because of the actions of others and he wants it to end so everyone can live in peace and sleep at night without any interruptions.

Analysis

25. The notice was served under Section 24, of the *Residential Tenancies Act, 2018*, which states:

24. Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) 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.

26. Statutory condition 7(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

7(a) Peaceful enjoyment and reasonable privacy- The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

27. The tenant was given a termination notice on 19-July-2023 to vacate the premises on 25-July-2023. This meets the timeline of “not less than 5 days after the notice has been served” as set out in section 24 of the Act. The termination notice meets the timeline requirements of the Act.

28. With regards to the interference of the other tenant’s peaceful enjoyment and reasonable privacy, I accept the landlord’s testimony that the tenant brings people around or is the reason why those people come around the property. I accept all 3 witness statements that confirm that the tenants are indeed scared in their own homes. In accordance with Section 24 of the *Residential Tenancies Act, 2018*, I find that the respondent has contravened statutory condition 7(a) as set out in subsection 10(1) as stated above. As such, the termination notice meets the requirements of the Act and is a valid notice.

29. I find the tenant should have vacated the premises by 25-July-2023.

Decision

30. The landlord’s claim for an order for vacant possession of the rented premises succeeds.

31. The tenant shall vacate the premises immediately

32. 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
33. The landlord is granted an Order of Possession.

Issue # 3: Security Deposit applied against monies owed \$500.00

Analysis

34. The landlord's claim for losses has been successful as per paragraph 16, 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

35. The landlords' claim to apply the security deposit against monies owed succeeds in the amount of \$500.00.

Issue # 4: Hearing expenses \$20.00

36. The landlord paid an application fee of \$20.00 to Residential Tenancies and provided a copy of the receipt (LL#6).
37. As the landlord's claim has been successful, the tenant shall pay the \$20.00.

Decision

38. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

39. The tenant shall pay the landlord \$690.64 as follows:

Rent	\$1170.64
Hearing expenses	20.00
Less Security deposit	<u>(\$500.00)</u>
Total	<u>\$690.64</u>

40. Orders that the tenant pay a daily rate of rent beginning 29-September of \$32.88, until such time as the landlord regains possession of the property.

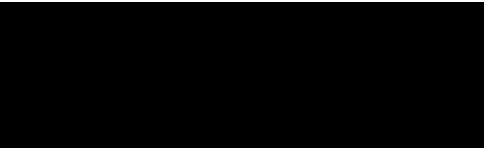
41. The tenant shall vacate the property immediately

42. 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.

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

October 11, 2023

Date


Pamela Pennell
Residential Tenancies Office