

Residential Tenancies Tribunal

Application 2023-0759-NL

Decision 23-0759-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:07 a.m. on 18-October-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” attended by teleconference.

Preliminary Matters

4. The respondents made a counter claim (2023-0873-NL) which was not dealt with during the hearing as the respondents did not serve the landlord with their counter claim in the timeframe required. The landlord did not wish to waive service thus the files were unmarked as counters and the issues relevant to application 2023-0759-NL were dealt with during the hearing on 18-October-2023.
5. The landlord submitted 2 affidavits with his application stating that he served the respondents with the notice of hearing electronically by email to: [REDACTED] and [REDACTED] on 29-September-2023 (LL#1)). The respondents confirmed receipt of the documents on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. There is a written month to month rental agreement which commenced on 15-February-2023. Rent is \$1600.00 per month, due on the first day of each month. A security deposit of \$1200.00 was paid on 15-February-2023 and is in the possession of the landlord.
7. The landlord amended the application to increase rent from \$2933.00 as per the application to \$6133.00 to include outstanding rent for the months of September and October, 2023. The landlord is also seeking hearing expenses in the amount of \$20.00. In the event of a vacant possession Order, the security deposit will be applied against any monies owed.

Issues before the Tribunal

8. The landlord is seeking:
 - a. Rent paid \$6133.00
 - b. Vacant possession of rental premises
 - c. 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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent.

Issue # 1: Rent Paid \$6133.00

Relevant Submissions

11. The landlord testified that rent is outstanding in the amount of \$6133.00 and in support of the claim submitted a rental ledger (LL#2) as follows:

Rental Ledger 2023-0759-NL			
Date	Action	Amount	Total
February 28, 2023	Balance	\$800.00	
July 1, 2023	rent due	\$1,600.00	\$2,400.00
July 1, 2023	Rent paid	-\$1,067.00	\$1,333.00
August 1, 2023	rent due	\$1,600.00	\$2,933.00
September 1, 2023	rent due	\$1,600.00	\$4,533.00
October 1, 2023	rent due	\$1,600.00	\$6,133.00

Landlord's Position

12. The landlord testified that \$800.00 dating back to February 2023 was never paid. The landlord stated that since March rent was paid in full until July when \$1067.00 was paid and no rent was received since July 2023. The landlord is seeking rent paid in the amount of \$6133.00.

Tenant's Position

13. The tenants did not dispute that they owe rent for the months of July onwards however, they did dispute owing \$800.00 for the month of February. The tenant's testified that they had a verbal agreement with the landlord that they could withhold \$800.00 of February's rent to purchase things needed for the house. The landlord stated that he agreed that they would hold back the \$800.00 not to purchase things but to pay the caretaker for work he completed around the property. The landlord testified that the tenants never gave the money to the caretaker.
14. The tenant's stated that they could not pay rent in full for July as their roommate moved out and left them in a financial bind. Also, they stated that they withheld rent for the months of August, September and October as they were under the impression that they could do that while they filed an application to have rent paid in trust while waiting for repairs to be completed.

Analysis

15. Non-payment of rent is a violation of the rental agreement. The landlord testified that there are rental arrears in the amount of \$6133.00. Rent is required to be paid by the tenants for the use and occupation of the rented premises. Rent is also required to be paid while applicants are waiting to have a dispute scheduled and heard. There is no evidence to show that the landlord allowed the tenant's to withhold \$800.00 to purchase things required for the premises, and as such the tenant's are responsible for rent in full for February 2023.
16. The rental ledger is amended to show a daily rate for October as this tribunal doesn't consider future rent (see below). I find that the tenants are responsible for outstanding rent from 1-February to 18-October-2023 in the amount of \$5479.80 and then a daily rate of \$52.60 shall apply as calculated below:

Rental Ledger 2023-0759-NL			
Date	Action	Amount	Total
February 28, 2023	Balance	\$800.00	
July 1, 2023	rent due	\$1,600.00	\$2,400.00
July 1, 2023	Rent paid	-\$1,067.00	\$1,333.00
August 1, 2023	rent due	\$1,600.00	\$2,933.00
September 1, 2023	rent due	\$1,600.00	\$4,533.00
October 1-18, 2023	rent due	\$946.80	\$5,479.80

Daily rate: \$1600 x 12 mths = \$19200
\$19200 / 365 days = \$52.60

17. I find that the tenants are responsible for outstanding rent in the amount of \$5479.80 for the period of 1-February to 18-October-2023.
18. I find that the tenants are responsible to pay a daily rate of rent beginning 19-October-2023 of \$52.60, until such time as the landlord regains possession of the property.

Decision

19. The landlord's claim for rent paid succeeds in the amount of \$5479.80.

Issue # 2: Vacant Possession of Rented Premises

Relevant submissions:

20. The landlord submitted a termination notice under Section 19; Notice of failure to pay rent. The notice was signed and dated for 16-August-2023 with a termination date of 27-August-2023 (LL#3).

Analysis

21. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice of failure to pay rent

- 19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(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

*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.*

(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.

22. The tenants were in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 27-August-2023 the tenants were still in arrears. I find that the termination notice meets the requirements of the Act and is a valid notice.

23. I find the tenant should have vacated the property by 27-August-2023.

Decision

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

25. The tenants shall vacate the premises immediately.

26. 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.

Issue # 3: Hearing Expenses

27. The landlord paid an application fee of \$20.00 to Residential Tenancies and provided a copy of the receipt (LL#4).

28. As the landlord's claim has been successful, the tenants shall pay the \$20.00.

Decision

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

Item # 4: Security deposit applied against monies owed \$1200.00

Analysis

30. The landlord's claim for losses has been successful as per paragraph 18, thus the application of the security deposit will be dealt with in this decision. Section 14 of the *Residential Tenancies Act, 2018* states:

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

31. The landlord shall apply the security deposit against any monies owed.

Summary of Decision

32. The tenants shall pay the landlord \$4299.80 as follows:

Rent paid \$5479.80

Hearing expenses 20.00

Less partial security deposit 1200.00

Total **\$4299.80**

33. Orders that the tenants pay a daily rate of rent beginning 19-October-2023 of \$52.60, until such time as the landlord regains possession of the property.

34. The tenants shall vacate the property immediately

35. 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.

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

October 30, 2023

Date


Pamela Pennell
Residential Tenancies Office