

## Residential Tenancies Tribunal

Application 2023-0825-NL

Decision 2023-0825-NL

Michael Reddy  
Adjudicator

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### Introduction

1. The hearing was called at 9:02 AM on 17 October 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended the hearing.
4. The details of the claims were presented as an oral monthly rental agreement with rent set at \$950.00 (heat and lights included) and due on the 1<sup>st</sup> of each month. There was a security deposit in the amount of \$200.00 collected in November 2022 which the landlord was still in possession. The tenant moved into the rental unit located at [REDACTED], in November 2022 and remains in the property on the date of the hearing (17 October 2023).
5. The landlord issued a termination notice on 21 August 2023 to terminate the tenancy on 1 September 2023 under section 19 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 1**). The tenant was served in-person at [REDACTED] on 2 October 2023 (**Exhibit L # 2**) an application for dispute resolution.
6. 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

7. The landlord amended her application at the hearing, increasing the rental arrears owing (\$3,800.00).
8. The landlord offered testimony during the hearing and did not call any witnesses. The tenant offered verbal testimony during the hearing and did not call any witnesses.

## Issues before the Tribunal

9. The landlord is seeking the following:
  - An order for payment of rent in the amount of \$3,800.00;
  - An order for vacant possession of the rented premises; &
  - An order for payment of hearing expense of \$20.00.

## Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
11. Also relevant and considered in this case is S. 19, 34 and 35 of the *Residential Tenancies Act*, 2018, and rule 29 of the *Rules of the Supreme Court*, 1986.

## Issue 1: Rent Owing- \$3800.00

### Landlord position

12. The landlord stated that there is a verbal monthly rental agreement established with the tenant, who has occupied the rental premises since November 2022.
13. The landlord testified the tenant last paid rent on 1 June 2023. The landlord also provided a rental ledger (**Exhibit L # 3**) which suggests the tenant held rental arrears for July 2023, August 2023 and September 2023 in the amount of \$2,850.00. In addition, the landlord testified the tenant also owed October 2023 rent and suggested the tenant was currently in arrears on the date of the hearing (17 October 2023) in the amount of \$3,800.00

### Tenant position

15. The tenant offered testimony that she had not paid rent for as required and stated, "everything is true". The tenant did not dispute any testimony offered by the landlord about rental arrears outstanding.

## Analysis

16. Non-payment of rent is a violation of the rental agreement. The landlord has amended the claim at the outset to add rent to include rent up until October 2023. This tribunal does not consider future rent.
17. The landlord submitted termination Notice under Section 19, notice where failure to pay rent with a requested possession of the premises by 1 September 2023 (**Exhibit L # 2**). As such, rent was due 1 September 2023 and rental arrears owing by the tenant equaling **\$2,850.00** including up to 31 September 2023.
18. Rent for October 2023 can only be calculated up to and including the day of the hearing (17 October 2023). That calculation is ( $\$950.00 \times 12 \text{ months} = \$11,400.00 \div 365 \text{ days} = \$31.23 \text{ per day} \times 17 \text{ days} = \$530.91$ ). Rent for 1 October 2023 – 17 October 2023 is **\$530.91**.
19. I accept the landlord's claim that the tenant has not paid rent as required. The tenant owes \$3,380.91. Current Balance of rental arrears is **\$3,380.91**.
20. Additionally, the tenant is responsible for rent on a daily basis in the amount of **\$ 31.23** beginning on 18 October 2023 and continuing until the day the landlord obtains vacant possession of the rented premises.

## Decision

21. The landlord's claim for a payment of the rent succeeds in the amount of **\$3,380.91**.

## Issue 2: Vacant Possession of Rented Premises

22. The landlord submitted termination Notice under Section 19, notice where failure to pay rent. The notice was signed and dated on 8 September 2023 and requested possession of the premises by 19 September 2023 (**Exhibit L # 2**).

## Analysis

23. 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.*

24. The tenant had been in rental arrears in excess of the 5 days when the notice was issued on 21 August 2023 to be out of [REDACTED] on 1 September 2023. The landlord offered testimony that the tenant last paid rent in June 2023. The tenant stated during the hearing that she remains in the property following being issued the notice to vacate. The termination notice is a valid notice.

25. I find the termination notice is a valid notice.

### **Decision**

26. The landlord's claim for an order for vacant possession succeeds.

### **Issue 3: Hearing Expenses- \$20.00**

27. The landlord paid an application fee of \$20.00 (**Exhibit L # 4**).

### **Decision**

28. As the landlord's claim has been successful, the tenant shall pay her hearing expense of **\$20.00** for the costs of filing this application.

## Summary of Decision

29. The landlord is entitled to the following:

- A payment of **\$3,400.91**, as determined as follows:
  - a) Rent owing .....\$3,380.91
  - b) Hearing expense.....\$20.00
  - c) Total.....**\$3,400.91**
- 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 18 October 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.

26 October 2023  
Date



Michael Reddy  
Residential Tenancies Office