

Residential Tenancies Tribunal

Application 2023-0849-NL

Decision 23-0849-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:52 p.m. on 16-October-2023.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference. Also present was [REDACTED].
3. The respondent, [REDACTED], hereinafter 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 him 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 the 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 he has been properly served. The landlord submitted an affidavit with their application stating that they served the respondent with the notice of hearing via prepaid registered mail; ([REDACTED]) on 19-September-2023 (LL#1)). Canada Post tracking shows that delivery was successful with signature dated 20-September-2023. 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 his absence.
5. The landlord’s representative stated that there is a written month to month rental agreement which commenced on 1-October-2020 (LL#2). Rent is \$349.00 per month, due on the first day of each month. The landlord’s representative states that a security deposit was never paid.

6. The landlord amended the application to increase rent from \$8965.95 as per the application to \$9314.95 to include outstanding rent for the month of October.

Issues before the Tribunal

7. The landlord is seeking:
- Rent paid \$9314.95
 - Vacant possession of rental premises
 - 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 19: Notice where failure to pay rent.

Issue # 1: Rent Paid \$9314.95

Relevant Submissions

10. The landlord testified that rent is outstanding in the amount of \$9314.95 and in support of the claim submitted a rental ledger (LL#3). Rental ledger is not copied into body of decision as it is too large to add.

Landlord's Position

11. The landlord testified that rent has been outstanding since 27-November-2020 and the last payment was made on 8-March-2022. The landlord is seeking rent paid in the amount of \$9314.95 which includes rent for the month of October 2023.

Analysis

12. Non-payment of rent is a violation of the rental agreement. The landlord testified that there were rental arrears in the amount of \$9314.95. 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 October as this tribunal doesn't consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-December-2020 to 16-October-2023 in the amount of \$9149.47 and then a daily rate of \$11.47 shall apply as calculated below:

Amended Rental Ledger 2023-0849-NL			
Date	Action	Amount	Total
September 30, 2023	Balance		\$8,965.95
October 1-16, 2023	rent due	\$183.52	\$9,149.47

Daily rate: $\$349 \times 12 \text{ mths} = \4188
 $\$4188 / 365 \text{ days} = \11.47

14. I find that the tenant is responsible for outstanding rent in the amount of \$9149.47 for the period of 1-December-2020 to 16-October-2023.

Decision

15. The landlord's claim for rent paid succeeds in the amount of \$9149.47.

Issue # 2: Vacant Possession of Rented Premises

Relevant submissions:

16. The landlord submitted a termination notice under Section 19; Notice of failure to pay rent. The notice was signed and dated for 18-August-2023 with a termination date of 1-September-2023 (LL#4).

Analysis

17. 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.

18. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 1-September-2023 the tenant was still in arrears. I find that the termination notice meets the requirements of the *Act* and is a valid notice.

19. I accept the landlord's testimony that the tenant had outstanding rental arrears.

20. I find the tenant should have vacated the property by 1-September-2023.

Decision

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

22. The tenant shall vacate the premises immediately.

23. 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.

Issue # 3: Hearing Expenses

24. The landlord paid an application fee of \$20.00 to Residential Tenancies and provided a copy of the receipt (LL#5).

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

Decision

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

Summary of Decision

27. The tenant shall pay the landlord \$9169.47 as follows:

Rent paid	\$9149.47
Hearing expenses	20.00
Total	<u>\$9169.47</u>

28. Orders that the tenant pay a daily rate of rent beginning 17-October-2023 of \$11.47, until such time as the landlord regains possession of the property.

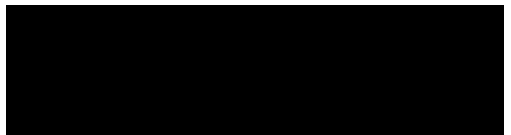
29. The tenant shall vacate the property immediately

30. 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.

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

October 24, 2023

Date



Pamela Pennell
Residential Tenancies Office