

Residential Tenancies Tribunal

Application 2023-No.0961-NL

Decision 23-0961-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 21-November-2023.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
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 her by telephone at the start of the hearing ([REDACTED] & [REDACTED]), however I did leave a message on her landline. 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 she has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, electronically at [REDACTED], on 23-October-2023 at 12:07 p.m. They also provided proof of this electronic service (LL#01). 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. The landlord amended their application to increase rent from \$4,606.00 to \$4,660.00 to reflect the current amount of rent due.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$4,660.00
 - Security deposit applied against monies owed \$300.00

- Vacant possession of rental premises
- Hearing Expenses \$20.00

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$4,660.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. They entered a written monthly agreement with the tenant and her previous partner on 13-June-2014; they later entered a second agreement with just the tenant on 07-July-2016. They are currently in a monthly agreement. The tenant's rent is based on her income, the landlord provided a copy of the terms (LL#02) which confirms that the rent is based on 25% of the tenant's income after Income Tax, Employment Insurance and Canada Pension. Currently she pays \$1,004.00 a month which includes utilities. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$300.00 on 13-June-2014 and they are still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#03) the ledger begins with a balance of \$148.00, as follows:

Rent ledger
2023-0961-NL

Date	Action	Amount	total
1-Jan-22	starting balance	148.00	148.00
1-Jan-22	rent due	687.00	835.00
17-Jan-22		-400.00	435.00
17-Feb-22	rent due	687.00	1122.00
1-Feb-22		-550.00	572.00
1-Mar-22	rent due	687.00	1259.00
11-Mar-22		-700.00	559.00
1-Apr-22	rent due	687.00	1246.00
14-Apr-22		-725.00	521.00
1-May-22	rent due	687.00	1208.00
5/124/2022		-685.00	523.00
1-Jun-22	rent due	687.00	1210.00

17-Jun-22		payment	-600.00	610.00
1-Jul-22	rent due		687.00	1297.00
14-Jul-22		payment	-900.00	397.00
1-Aug-22	rent due		687.00	1084.00
17-Aug-22		payment	-600.00	484.00
1-Sep-22	rent due		687.00	1171.00
1-Oct-22	rent due		687.00	1858.00
5-Oct-22		payment	-300.00	1558.00
1-Nov-22	rent due		687.00	2245.00
1-Nov-22		payment	-500.00	1745.00
1-Dec-22	rent due		687.00	2432.00
7-Dec-22		payment	-600.00	1832.00
1-Jan-23	rent due		687.00	2519.00
1-Feb-23	rent due		687.00	3206.00
1-Feb-23		payment	-400.00	2806.00
16-Feb-23		payment	-300.00	2506.00
1-Mar-23	rent due		687.00	3193.00
29-Mar-23		payment	-800.00	2393.00
1-Apr-23	rent due		687.00	3080.00
13-Apr-23		payment	-350.00	2730.00
1-May-23	rent due		628.00	3358.00
10-May-23		payment	-300.00	3058.00
1-Jun-23	rent due		628.00	3686.00
1-Jul-23	rent due		628.00	4314.00
5-Jul-23		payment	-1250.00	3064.00
1-Aug-23	rent due		1004.00	4068.00
1-Aug-23		payment	-670.00	3398.00
1-Sep-23	rent due		1004.00	4402.00
25-Sep-23		payment	-800.00	3602.00
1-Oct-23	rent due		1004.00	4606.00
10-Oct-23		payment	-500.00	4106.00
23-Oct-23		payment	-450.00	3656.00
1-Nov-23	01-21 Nov daily rate		693.21	4349.21

Daily rate \$1,004.00 x 12 months = \$12,048.00

\$12,048.00 divided by 365 days = \$33.01

\$33.01 x 21 days = \$693.21

11. Note: ledger is amended to show a daily rate for November, as this tribunal doesn't consider future rent.
12. The landlord is seeking full compensation for rent owed.

Analysis

13. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$4,349.21.

14. I find that the tenant shall pay the landlord the rent owed totaling \$4,349.21.

Decision

15. The landlord's claim for rent succeeds in the amount of \$4,349.21.

Issue 2: Security deposit applied against monies owed \$300.00

Relevant Submissions

16. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$300.00 on 13-June-2013 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

17. The landlord's claim for loss has been successful, paragraph 15, and they shall retain the 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

18. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$300.00.

Issue 3: Vacant Possession of the Rental Premises

Relevant Submissions

19. The landlord submitted a termination notice (LL#04). It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 28-September-2023, with a termination date of 10-October-2023.

20. The landlord said that they served this by email on 28-September-2023 at 11:41 p.m. She submitted proof of the sent email into evidence (LL#05).

Analysis

21. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which states:

Notice where 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 tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance with the Act.

23. The tenant should have vacated the property by 10-October-2023.

Decision

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

25. The tenant shall vacate the premises immediately.

26. The tenant shall pay to the landlords 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.
27. The tenant shall pay a daily rate for rent beginning 22-November-2023 of \$33.01, as per paragraph 10, until such time as the landlords regain possession of the property.

Issue 4: Hearing expenses reimbursed \$20.00

28. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

29. The tenant shall:

- Pay the landlord \$4,069.21 as follows:
 - Rent \$4,349.21
 - Hearing expenses 20.00
 - Security deposit applied (300.00)
 - Total \$4,069.21
- Pay a daily rate of rent beginning 22-November-2023 of \$33.01, until such time as the landlords regain possession of the property.
- Vacate the property immediately.
- Pay to the landlords 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.

The landlord

- Will be awarded an Order of Possession.
- Shall retain the security deposit of \$300.00.

December 1, 2023
Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office