

Residential Tenancies Tribunal

Application 2023-0986-NL

Decision 2023-0986-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:56 PM on 16 November 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 a written monthly rental agreement with rent set at \$1400.00 and due on the 1st of each month. There was a security deposit collected on this tenancy and the landlord remained in possession of \$700.00. The tenant moved into the rental unit located at [REDACTED] [REDACTED] on 1 November 2022 and remains in the property on the date of the hearing (16 November 2023).
5. The landlord issued a termination notice on 17 September 2023 to terminate the tenancy on 30 September 2023 under section 19 of the *Residential Tenancies Act, 2018* (**Exhibit L # 1**). The tenant was served by electronic mail (**Exhibit L # 2**) an application for dispute resolution on 25 October 2023 at [REDACTED]
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 to include rental arrears owing to also include November 2023.

8. The landlord offered testimony during the hearing and did not call any witnesses.
9. The tenant offered testimony during the hearing and did not call any witnesses.

Issues before the Tribunal

10. The landlord is seeking the following:

- An order for payment of rent in the amount of \$3,135.00;
- An order for vacant possession of the rented premises;
- Damages in the amount of \$300.00
- To retain the security deposit of \$700.00; &
- An order for hearing expenses

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
12. Also relevant and considered in this case is S. 14, 19, 34, 35, and 42 of the *Residential Tenancies Act*, 2018.

Issue 1: Rent Owing- \$3,135.00

Landlord position

13. The landlord stated that there is a written monthly rental agreement established with the tenant, who has occupied the rental premises since 1 November 2022 (**Exhibit L # 3**).
14. The landlord offered evidence that attempts were made to rectify the rental arrears as prior notice was sent to the tenant to deal with the rental arrears (**Exhibit L # 1**).
15. The landlord stated she was seeking rental arrears between 1 September 2023 and 30 November 2023.

16. The landlord offered testimony the tenant was last at a zero balance on 18 August 2023. The landlord offered an Account Transaction (**Exhibit # 4**). This evidence indicates the following information:

Date	Description	Debit	Credit	Balance
1 Sept 2023	Rent due	\$1,400.00		\$1,400.00
2 Sept 2023	Payment		\$545.00	\$855.00
1 Oct 2023	Rent due	\$1,400.00		\$2,255.00
5 Oct 2023	Payment		\$460.00	\$1,795.00
16 Oct 2023	Payment		\$60.00	\$1,735.00

17. As indicated in paragraph 7 herein, the landlord stated the tenant has not paid any rent payments since 16 October 2023 and on the date of the hearing (16 November 2023), rent for November 2023 has not been collected.

Tenant Position

18. The tenant offered testimony that her and the landlord had a verbal agreement where she would pay half a rent payment on the first of each month, followed by the 16th of each month.

19. The tenant did not dispute that she was in rental arrears in the identified amount \$3,135.00 and suggested this was due to her experiencing recent financial hardship. The tenant also expressed her wish to pay the rental arrears back in full.

Analysis

20. 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 between 1 September 2023 and 30 November 2023. This tribunal does not consider future rent.

21. The landlord submitted Notice under Section 19 (**Exhibit L # 1**). As such, rent was due 1 September 2023 and rental arrears owing by the tenant equaling **\$1,735.00** including up to 31 October 2023.

22. Rent for November 2023 can only be calculated up to and including the day of the hearing (16 November 2023). That calculation is $(\$1,400.00 \times 12 \text{ months} = \$16,800.00 \div 365 \text{ days} = \$46.03 \text{ per day} \times 16 \text{ days} = \$736.48)$. Rent for 1 November 2023 – 16 November 2023 is **\$736.48**.

23. I accept the landlord's claim that the tenant has not paid rent as required. I do not accept the tenant owes rental arrears in the amount of \$3,135.00. The tenant owes \$2,471.48. Current Balance of rental arrears is **2,471.48**.

24. Additionally, the tenant is responsible for daily rent in the amount of **\$ 46.03** beginning on 17 November 2023 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

25. The landlord's claim for a payment of the rent succeeds in the amount of **\$2,471.48**.

Issue 2: Vacant Possession of Rented Premises

26. The landlord submitted termination Notice under Section 19, in relation to the tenant's failure to pay rent (**Exhibit L # 1**).

Analysis

27. 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.*

28. The tenant had been in rental arrears in excess of the 5 days when the notice was served on 17 September 2023 to be out of [REDACTED] on 30 September 2023. The tenant remains in the property following being issued the notice to vacate and has been charged additional rent.
29. I find the termination notice is a valid notice.

Decision

30. The landlord's claim for an order for vacant possession does succeed.

Issue 3: Damages- \$300.00

Landlord position

31. The landlord claimed she had observed potential damages at the rental property but suggested she did not have any evidence to support her allegation.

Tenant position

32. The tenant denied there being any damages which she caused to the rental property.

Analysis

33. The landlord denied having any evidence of damages to the rental property caused by the tenant. She also stated that if she was to obtain a vacant possession order, she would file an application for any relevant damages to the property at [REDACTED]
[REDACTED]
34. 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 her account of events are more likely than not to have happened.
35. In regard to the allegation the tenant has caused damages to the rental property is without any evidence to prove or disprove the damages exist. It is for this reason that I find the landlord's claim for damages in any amount does not succeed.

Decision

36. The landlord's claim for compensation for damages fails.

Issue 4: To retain the Security Deposit- \$700.00

Landlord position

37. The landlord offered testimony the security deposit was paid on the rental by the tenant over two dates:
 - \$500.00 paid on 27 October 2022
 - \$200.00 paid on 18 November 2022
38. The landlord stated she remains in possession of this security deposit and wished to use to contribute to monies owing of the tenant. The landlord offered she had an understanding the tenant was experiencing financial difficulties and suggested this could help the tenant.

Tenant position

39. The tenant did not offer any testimony into this issue and did not dispute the potential of her security deposit being used to contribute to monies owing to the landlord.

Analysis

40. The landlord provided testimony and evidence that the security deposit (\$700.00) was paid in full on 18 November 2022.
41. 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 tenant may apply to the director under section 42 to determine the disposition of the security deposit.*

42. The landlord's claim for rent, hearing expenses and late fees succeed, he shall retain that security deposit as outlined in this decision and attached order.

Issue 5: Hearing Expense

43. The landlord offered evidence of the application fee (**Exhibit L # 5**) and was seeking compensation.
44. As the landlords claim is successful, the tenant shall pay \$20.00 for the hearing expense.

Decision

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

Summary of Decision

46. The landlord is entitled to the following:

- A payment of **\$1,791.48**, as determined as follows:

a) Rent owing	\$2,471.48
b) Less Security Deposit.....	(\$700.00)
c) Hearing Expenses.....	\$20.00
e) Total.....	<u>\$1,791.48</u>

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of **\$46.03**, beginning 17 November 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.

30 November 2023

Date

Michael J. Reddy
Residential Tenancies Office