

Residential Tenancies Tribunal

Application 2023-0988-NL

Decision 2023-0988-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 29 November 2023 via teleconference.
2. The applicant, [REDACTED] and hereinafter referred to as “the landlord”, attended the hearing. The landlord did not call any witnesses.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing and was not represented.
4. The details of the claims were presented as a verbal monthly rental agreement with rent set at \$580.00 and an agreement was in place that the tenant would pay on the 1st and 15th of each month. There was a security deposit collected on this tenancy, which the landlord was still in possession of, that was collected in August 2019. The tenant moved into the rental unit located at [REDACTED], in August 2019 and remains in the property on the date of the hearing (29 November 2023).
5. The landlord issued the tenant a termination notice on 28 September 2023 to terminate the tenancy on 15 October 2023 under section 19 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 1**). The landlord submitted an Application for Dispute Resolution (**Exhibit L # 2**). The tenant was served personally an application for dispute resolution on 1 November 2023 (**Exhibit L #3**) when the landlord posted this notice on the door of [REDACTED], [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 his application at the hearing, increasing the rental arrears owing (\$1,740.00) to include rent due for 1 November 2023 and 15 November 2023, along with \$20.00 hearing expenses.
8. The landlord offered testimony during the hearing and did not call any witnesses.
9. The tenant was not present or represented at this hearing and I was unable to reach her by telephone at the start of the hearing. I attempted to reach the tenant at 9:06 AM at a telephone number on file () however was unsuccessful. 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 with his application stating he served the tenant, in person, on 1 November 2023. As the tenant was properly served, and as further delay in the proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

10. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$1,740.00;
 - An order for vacant possession of the rented premises; &
 - An order for hearing expenses of \$20.00

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. 19, 34, 35, and 42 of the *Residential Tenancies Act, 2018*, and rule 29 of the *Rules of the Supreme Court, 1986*.

Issue 1: Rent Owing- \$1,740.00

Relevant Submissions

13. The landlord stated that there is a written monthly rental agreement established with the tenant, who has occupied the rental premises since August 2019.

14. The landlord testified the tenant had paid a security deposit on this tenancy in the amount of \$290.00 and offered a receipt of this security deposit (**Exhibit L # 4**). The landlord offered evidence that attempts were made before and after the notice to terminate the tenancy was issued (**Exhibit L # 1**). The landlord also offered a rental ledger in relation to the tenants rental payments between 1 August 2023 and 1 October 2023 (**Exhibit L # 5**).

15. This evidence indicates the tenant last carried a \$0.00 balance in rent owing on 7 August 2023. The landlord offered testimony the tenant started to incur rental arrears since 15 August 2023 and last rental payment made by the tenant was in the amount of \$290.00 on 7 August 2023. The Statement of Rent Account indicates the following information:

Date	Transaction	Debit	Credit	Balance
7 Aug. 2023	Rent Due	\$290.00		\$2,971.00
7 Aug. 2023	Payment		<u>\$290.00</u>	\$0.00
15 Aug. 2023	Rent Due	\$290.00		\$290.00
1 Sept 2023	Rent Due	<u>\$290.00</u>		\$580.00
15 Sept.2023	Rent Due	\$290.00		\$870.00
1 Oct. 2023	Rent Due	\$290.00		\$1,450.00

16. As indicated within paragraph 7 herein, the landlord had requested to include rental arrears owing to including rent payments for 15 October 2023 and 15 November 2023.

Analysis

17. 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 for November 2023. This tribunal does not consider future rent.

18. The landlord submitted Notice under Section 19 (**Exhibit L # 1**). As such, rent was due 1 October 2023 and rental arrears owing by the tenant equaling **\$1,740.00** including up to 31 October 2023.

19. Rent for November 2023 can only be calculated up to and including the day of the hearing (29 November 2023). That calculation is $(\$580.00 \times 12 \text{ months} = \$6,960.00 \div 365 \text{ days} = \$19.07 \text{ per day} \times 29 \text{ days} = \$553.03)$. Rent for 1 November 2023 – 29 November 2023 is **\$553.03**.

20. 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 \$1740.00. The tenant owes \$2,293.03. Current Balance of rental arrears is **\$2,293.03**.

21. Additionally, the tenant is responsible for rent daily in the amount of **\$ 19.07** beginning on 30 November 2023 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

22. The landlord's claim for a payment of the rent succeeds in the amount of **\$2,293.03**.

Issue 2: Vacant Possession of Rented Premises

23. The landlord submitted a termination notice under Section 19, notice where failure to pay rent (**Exhibit L # 1**).

Analysis

24. 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.

25. The tenant had been in rental arrears in excess of the 5 days when the notice was served on 28 September 2023 to be out of [REDACTED] on 15 October 2023. The tenant remains in the property following being issued the notice to vacate and has been charged additional rental payment for October and November 2023. The termination notice is a valid notice.

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

Decision

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

Issue 3: Hearing Expense- \$20.00

28. The landlord offered evidence that hearing expense included the application fee of \$20.00 and requested to be reimbursed (**Exhibit L # 6**). As the landlord's claim succeeds, he is eligible for reimbursement of hearing expenses.

29. I find the landlord's claim for hearing expense fee succeeds in the amount of \$20.00.

Decision

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

Summary of Decision

31. The landlord is entitled to the following:

- A payment of **\$2,313.03**, as determined as follows:
 - a) Rent owing\$2,293.03
 - b) Hearing Expense.....\$20.00
 - c) Total.....**\$2,313.03**
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$19.07, beginning by 30 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.

12 December 2023 _____
Date

Michael J. Reddy
Residential Tenancies Office