# Residential Tenancies Tribunal

Application 2023-No.0996 -NL        Decision 23-0996-00

Jacqueline Williams
Adjudicator

## Introduction

1.      Hearing was called at 2:02 p.m. on 15-November-2023.

2.      The applicant, ███████████, hereinafter referred to as "the landlord" did not attend.

3.      The landlord submitted an authorized representative form (LL#01) naming ███████ ██████ as his representative; she attended by teleconference.

4.      The respondent, ████████████, hereinafter referred to as "the tenant" did not attend.

## Preliminary Matters

5.      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 (██████████).  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#02) with his application stating that the authorized representative had served the tenant with notice of the hearing, electronically on 26-October-2023 at 2:27 p.m. by email ████████████████████).  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.

6.      The landlord amended their application to increase rent from $7,800.00 to $9,000.00 to reflect the current amount of rent due. As she is seeking vacant possession, she also amended her application to include security deposit applied against monies owed, $1,350.00.

**Issues before the Tribunal**

7.      The landlord is seeking:
- Rent $9,000.00
- Security deposit applied against monies owed $1,350.00
- Vacant possession of rental premises

**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 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

**Issue 1: Rent $9,000.00**

Relevant Submissions

10.     The landlord submitted a rental agreement (LL#03) with the application. They entered a written term agreement with the tenant from 01-April-2023 until 31-March-2024. The tenant pays $1,800.00 a month for rent. 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 authorized representative said that the tenant paid a security deposit of $1,350.00 on 08-April-2023 and they are still in possession of the deposit.

11.     The landlord submitted a rent ledger with the application (LL#04), the authorized representative confirmed that rent was paid in full up to and including June rent. She said that the last payment received from the tenant was $600.00 on 16-June-2023.

12.     The authorized representative stated that they are seeking rent from July – November: 5 months x $1,800.00 = $9,000.00.

**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 after 16-June-2023.

14.     As this tribunal doesn't consider future rent, rent for the current month of November will be considered up to and including the date of the hearing 15-November-2023. The daily rate will be calculated as follows: $1,800.00 x 12 months = $21,600.00 per year divided by 365 days = $59.18 x 15 days = $887.70.

15. The landlord will be awarded in rent as follows:

- July ............................................ $1,800.00
- August ........................................ 1,800.00
- September ................................... 1,800.00
- October....................................... 1,800.00
- 1-15 November .............................. <u>887.70</u>
- Total.......................................... <u>$8,087.70</u>

16. The tenant shall pay the landlord the rent owed totaling $8,087.70.

**Decision**

17. The landlord's claim for rent succeeds in the amount of $8,087.70.

**Issue 2: Security deposit applied against monies owed $1,350.00**

<u>Relevant Submissions</u>

18. The authorized representative stated in paragraph 10 that the tenant paid a security deposit of $1,350.00 on 08-April-2023 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

**Analysis**

19. The landlord's claim for loss has been successful, paragraphs 17, 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**

20. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of $1,350.00.

**Issue 3: Vacant Possession of the Rental Premises**

<u>Relevant Submissions</u>

21.     The landlord submitted a termination notice (LL#05).  It is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 06-October-2023 with a termination date of 17-October-2023.

22.     The authorized representative stated that she served the tenant by email before 4:00 p.m. on 06-October-2023 and she also posted the notice to the tenant's door the same day.

**Analysis**

23.     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.*

    *…..*

24.     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 of the Act.

25. The tenant should have vacated the property by 17-October-2023.

## Decision

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

27. The tenant shall vacate the premises immediately.

28. 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.

29. The tenant shall pay a daily rate for rent beginning 16-November-2023 of $59.18, as per paragraph 14, until such time as the landlord regains possession of the property.

## Summary of Decision

30. The tenant shall:

   - Pay the landlord $6,737.70 as follows:

      - Rent ............................... $8,087.70
      - Security deposit applied ..(1,350.00)
         o Total .................... $6,737.70

   - Pay a daily rate of rent beginning 16-November-2023 of $59.18, until such time as the landlord regains 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 $1,350.00.


November 20, 2023
   Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office