

Residential Tenancies Tribunal

Application 2023-0997-NL

Decision 2023-0997-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:00 AM on 11 January 2024 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, attended the hearing.
3. The respondents, [REDACTED] hereinafter referred to as “tenant1”, and [REDACTED] hereinafter referred to as “tenant2”, attended the hearing.
4. The details of the claims were presented as a verbal monthly rental agreement with rent set at \$550.00 and due on the 1st of each month. There was no security deposit collected on this tenancy. The tenants moved into the rental unit located at [REDACTED] on 21 July 2021 and remain in the property on the date of the hearing (11 January 2024).
5. The landlord issued a Landlord’s Notice to Terminate Early- Cause on 17 April 2023 under section 19 of the *Residential Tenancies Act*, 2018, requesting the tenants to be out of the rental by 8 May 2023 (**Exhibit L # 1**). On 12 September 2023, the landlord issued a Landlord’s Notice to Terminate Early- Cause under section 19 of the *Residential Tenancies Act*, 2018, requesting the tenants to be out of the rental by 30 September 2023 (**Exhibit L # 2**). The landlord issued a Landlord’s Notice to Terminate Early- Cause on 25 September 2023 to terminate the tenancy on 17 October 2023 under section 19 of the *Residential Tenancies Act*, 2018 (**Exhibit L # 3**). The tenants were served in person on 15 November 2023 (**Exhibit L # 4**) an application for dispute resolution. On 8 December 2023, the tenants were served a Residential Tenancies Act Notice of Rescheduled Hearing (**Exhibit L # 5**).
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 is seeking an order of vacant possession of the rental unit and did amend her application at the hearing as she was not seeking rental arrears.
8. The landlord offered testimony during the hearing and did not call any witnesses. The tenants offered verbal testimony during the hearing and did not call any witnesses.

Issues before the Tribunal

9. The landlord is seeking the following:
 - An order for vacant possession of the rented premises; and
 - An order for payment of late fees of \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
11. Also relevant and considered in this case is S. 19, 34 and 35 of the *Residential Tenancies Act*, 2018, as well as Policy 7-01, Notice of Termination: General Information of the *Residential Tenancies Program* policies.

Issue 1: Vacant Possession of Rented Premises

Landlord position

12. The landlord stated that there is a verbal monthly rental agreement established with the tenants, who has occupied the rental premises since 21 July 2021 with rent due on the first of each month.
13. The landlord testified the tenants have not been consistent in their monthly rental payments. She stated for the months of September 2023, October 2023, November 2023, December 2023 and January 2024, rent has not been paid by the tenants. She stated there had been no rent paid by the tenants since September 2023.
14. The landlord submitted rent receipts (**Exhibit L # 6**) regarding rental payments between February 2023 and October 2023. This evidence indicates the following information:

Rent For	Rent	Payment Date	Paid	Amount Owing
January 2023	\$550.00	16 January 2023	\$325.00	\$225.00
February 2023	\$550.00	---	\$0	\$775.00
March 2023	\$550.00	---	\$0	\$1325.00
April 2023	\$550.00	---	\$0	\$1875.00
May 2023	\$550.00	19 May 2023	\$1,650.00	\$225.00
June 2023	\$550.00	19 June 2023	\$500.00	\$275.00
		26 June 2023	\$550.00	(\$275.00)
July 2023	\$550.00	28 July 2023	\$600.00	(\$325.00)
August 2023	\$550.00	25 August 2023	\$550.00	(\$325.00)
September 2023	\$550.00	---	\$0	\$225.00
October 2023	\$550.00	---	\$0	\$775.00
November 2023	\$550.00	---	\$0	\$1325.00
December 2023	\$550.00	---	\$0	\$1875.00

Tenants position

15. Tenant1 did not dispute the testimony of the landlord in relation to the verbal monthly agreement. She testified there had been situations when they did not pay rent by the first of the month.
16. Tenant2 did not dispute the testimony of the landlord in relation the verbal rental agreement was in place. He testified that they had spoken to the landlord about paying rent in the last week of each month. Tenant2 stated this was due to health concerns which tenant1 experienced and receipt of his payment from Workman's Compensation not being received on a consistent basis.
17. Tenant2 stated he had requested for damages to be repaired in the rental unit by the landlord and those requests were not completed. Tenant2 stated the rental property required repairs and said for a period, they were paying \$650.00 per month rent. Tenant2 suggested they stopped paying \$650.00 per month and began paying \$550.00 due to requested repairs not being completed by the landlord.
18. Tenant2 testified that they stopped sending rent payments by electronic transfer and had requested for the landlord to attend [REDACTED] NL to receive cash payments for rent. He stated, "I told her three times I wouldn't send rent by e-mail and she would have to come to the house. She didn't show up. Every time she came to the door and knocked, she got her money. It is not my problem she didn't get her rent money. I am not responsible for her".
19. Tenant2 acknowledged getting the termination notice issued by the landlord. The tenants offered evidence of correspondence between themselves and the landlord (**Exhibit T # 1**) about payment of rent and concerns with the need for repairs in the rental. Tenant2 stated, "I never paid rent because she is going around town saying I didn't pay rent. If she is going to keep saying I am not paying rent, I am going to stop. I

stopped paying rent in September. I am not refusing to pay her rent. I am saying, she can't go around saying that I didn't pay my rent. She wants to make us look bad".

20. Tenant2 testified they did not pay rent for October, November, December 2023 or January 2024.

Analysis

21. The landlord submitted a Landlord's Notice to Terminate Early- Cause issued to the tenants on 17 April 2023 under Section 19 requesting the tenants to be out by 8 May 2023 (**Exhibit L # 1**). Rent was paid for March, April and May 2023 on 19 May 2023 by the tenants as indicated in the rent receipts submitted by the landlord (**Exhibit L # 6**).
22. The landlord submitted a Landlord's Notice to Terminate Early- Cause issued to the tenants on 12 September 2023 under Section 19, with a request for possession of the premises by 30 September 2023 (**Exhibit L # 2**). I also observe evidence offered by the landlord showing an initial partial electronic payment of rent for September 2023, which was later cancelled by tenant1 (**Exhibit L # 8**).
23. Determining the validity of the 12 September 2023 is not required. As stated in the *Residential Tenancies Program Policy 7-001*, "If a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice".
24. The landlord issued a third Landlord's Notice to Terminate Early- Cause to the tenants on September 25, 2023 under Section 19, requesting the tenants be out of the rental unit by 17 October 2023 (**Exhibit L # 3**). The tenants testified that they had stopped paying rent in September 2023.
25. Non-payment of rent is a violation of the rental agreement. The landlord was not seeking rental arrears. 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.**

(3) Subsection (2) does not apply where notice is given to a tenant under paragraph (1)(a) of (b) more than twice in a 12 month period.

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.

26. Non-payment of rent is a violation of the rental agreement. Evidence, including the tenants own testimony, demonstrates that the tenants were overdue on the amount of rent payable to the landlord by 23 clear days at the time the notice was issued. The termination notice issued to the tenants on 25 September 2023 is a valid notice, and the tenants were required to vacate the premises by 17 October 2023. While rent is required to be paid for the occupancy of a residential premises, the landlord is not seeking payment for rental arrears.

Decision

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

Issue 2: Hearing expenses - \$20.00

28. The landlord submitted a hearing receipt (**Exhibit L # 7**).

Decision

29. As the landlord was successful in her application, she is entitled to the application costs in the amount of the \$20.00.

Summary of Decision

30. The landlord is entitled to the following:

- A payment of **\$20.00**, as determined as follows:
 - a) Hearing expenses..... \$20.00
 - b) Total..... **\$20.00**

- An order for vacant possession of the rented premises.
- 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.

26 January 2024

Date


Michael J. Reddy
Residential Tenancies Office