

Residential Tenancies Tribunal

Application 2023-1031-NL

Decision 23-1031-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 12-December-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. 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 the notice of 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 their application stating that they had served the tenant with the notice of hearing personally, electronically and via pre-paid registered mail [REDACTED] on 7-November-2023 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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. There is a written month to month rental agreement which commenced on 25-February-2014. Rent is \$263.00 per month due on the first of each month. A security deposit was never paid.
6. The landlord amended the application to increase rent from \$1007.01 as per the application to \$1533.01 to include outstanding rent for the months of November and December. The applicant is also seeking hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$1533.01
 - Hearing expenses \$20.00

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 19: Notice where failure to pay rent.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted a copy of the termination notice under Section 19: Notice where failure to pay rent. The termination notice is signed and dated for 20-October-2023, with a termination date of 30-November-2023 (LL#2).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since July 2023, with a balance of \$1533.01 for the period of 1-July to 31-December.

Analysis

12. Section 19 of the *Residential Tenancies Act, 2018* 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.

13. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 30-November-2023 the tenant was still in arrears. In accordance with Section 19 of the *Residential Tenancies Act, 2018* as stated above, the termination notice meets the requirements of the *Act* and is a valid notice.

14. I find that the tenant should have vacated the property by 30-November-2023.

Decision

15. The landlord's claim for an order for vacant possession of the rented premises succeeds.

Issue # 2: Rent paid \$1533.01

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$1533.01 dating back to July 2023. The landlord submitted a copy of the rental ledger to support their claim (LL#3). See breakdown of ledger below:

Rental Ledger 2023-1031-NL			
Date	Action	Amount	Total
June 30, 2023	Balance		-\$44.99
July 1, 2023	Rent due	\$263.00	\$218.01
August 1, 2023	Rent due	\$263.00	\$481.01
September 1, 2023	Rent due	\$263.00	\$744.01
October 1, 2023	Rent due	\$263.00	\$1,007.01
November 1, 2023	Rent due	\$263.00	\$1,270.01
December 1, 2023	Rent due	\$263.00	\$1,533.01

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$1533.01 for the period of 1-July to 31-December-2023. The landlord is seeking rent to be paid in full.

Analysis

18. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(b) where the residential premises is

rented from month to month,

rented for a fixed term, or

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

19. Non-payment of rent is a violation of the rental agreement. The landlord's representative testified that there is outstanding rent in the amount of \$1533.01. Rent is required to be paid for the use or occupancy of a residential premises.

20. The rental ledger is amended to show a daily rate for December as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-July to 12-December in the amount of \$1373.81.

Amended Rental Ledger 2023-1031-NL			
Date	Action	Amount	Total
June 30, 2023	Balance		-\$44.99
July 1, 2023	Rent due	\$263.00	\$218.01
August 1, 2023	Rent due	\$263.00	\$481.01
September 1, 2023	Rent due	\$263.00	\$744.01
October 1, 2023	Rent due	\$263.00	\$1,007.01
November 1, 2023	Rent due	\$263.00	\$1,270.01
December 1-12, 2023	Rent due	\$103.80	\$1,373.81

Daily rate: \$263 x 12 mths = \$3156
\$3156 / 365 days = \$8.65 per day

21. I find that the tenant is responsible for outstanding rent in the amount of \$1373.81 for the period of 1-July to 12-December-2023.

22. The tenant shall pay a daily rate of \$8.65 until such time as the landlord regains possession of the property.

Decision

23. The landlord's claim for rent succeeds in the amount of \$1373.81

Issue # 3: Hearing expenses \$20.00

24. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#4).

25. As the landlord's claim has been successful, the tenant shall pay the \$20.00.

Decision

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

Summary of Decision

27. The tenant shall pay the landlord \$1393.81 as follows:

Rent	\$1373.81
Hearing expenses.....	20.00

Total..... **\$1393.81**

28. The tenant shall pay a daily rate of rent beginning 13-December-2023 of \$8.65, until such time as the landlord regains possession of the property.

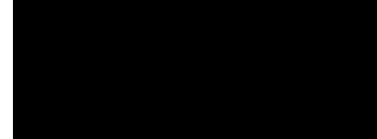
29. The tenant shall vacate the property immediately.

30. 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.

31. The landlord will be awarded an Order of Possession.

January 3, 2024

Date



Pamela Pennell
Residential Tenancies Office