

Residential Tenancies Tribunal

Application 2023-1035-NL

Decision 23-1035-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 7-December-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlords submitted an affidavit with their application stating that they served the tenant with the notice of hearing personally at the following address: [REDACTED] on 22-November-2023 (LL#1). The tenant confirmed receiving the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month to month rental agreement which commenced roughly 13 years ago. A renewal of the agreement was signed in 2022. Rent is \$950.00 per month due on the first of each month. A security deposit of \$475.00 was paid on 6-January-2012 and is in the landlord’s possession.
6. The landlords amended the application to increase rent from \$1300.00 as per application to \$3,200.00 to include outstanding rent for the months of November and December. The applicants are seeking hearing expenses and the security deposit will also be dealt with in this decision.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$3,200.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$475.00

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 14: Security deposit and Section 19: Notice where failure to pay rent.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted several termination notices under Section 19: Notice where failure to pay rent. The most recent termination notice is signed and dated for 26-October-2023, with a termination date of 6-November-2023 (LL#2).

Landlord's Position:

11. The landlords testified that rent has been in arrears since September 2023, with a balance of \$1,300.00 at the end of October. Outstanding rent for November and December brings the total to \$3,200.00.

Tenant's Position

12. The Tenant did not dispute that rent is outstanding in the amount of \$3,200.00 or that a termination notice was given to him, however the tenant stated that he felt like he had good reason to withhold rent. The tenant stated that the unit was full of mold when he took possession, and he had an air quality test conducted to prove that the mold exists. The tenant stated that he advised the landlords that he would not be paying rent until the mold problem was rectified. The tenant stated that the landlord has threatened him physically and threatened his personal property.

Analysis

13. 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.

14. I accept that the tenant wanted the mold problem to be dealt with and felt that withholding rent was the proper course of action, however in accordance with the *Residential Tenancies Act, 2018*, there are remedies in place to handle such situations which do not involve withholding rent on your own. Rent is required to be paid for the use or occupancy of a residential premises.

15. The tenant was in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 6-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.

16. I find that the tenant should have vacated the property by 6-November-2023.

Decision

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

Issue # 2: Rent paid \$3200.00

Relevant Submission

18. The landlord's testified that rent is outstanding in the amount of \$3,200.00 dating back to September 2023. The landlord submitted a copy of the rental ledger to support their claim (LL#3). See breakdown of ledger below:

Rental Ledger 2023-1035-NL			
Date	Action	Amount	Total
October 30, 2023	Balance		\$1,300.00
November 1, 2023	Rent due	\$950.00	\$2,250.00
Decedmber 1, 2023	Rent due	\$950.00	\$3,200.00

Landlord's Position

19. The landlords testified that rent is outstanding in the amount of \$3,200.00 for the period of 1-September to 31-December-2023. The landlord is seeking rent to be paid in full.

Tenant's Position

20. The tenant did not dispute that rent is outstanding in the amount of \$3,200.00, however the tenant stated that he had reasons to withhold the rent as stated above in paragraph 12.

Analysis

21. 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

22. 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 \$3,200.00 and the tenant did not dispute the amount. Rent is required to be paid for the use or occupancy of a residential premises.

23. 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-September to 7-December in the amount of \$2,468.61.

Amended Rental Ledger 2023-1035-NL			
Date	Action	Amount	Total
October 30, 2023	Balance		\$1,300.00
November 1, 2023	Rent due	\$950.00	\$2,250.00
December 1-7, 2023	Rent due	\$218.61	\$2,468.61

Daily rate: \$950 x 12 mths = \$11400
\$11400 / 365 days = \$31.23 per day

24. I find that the tenant is responsible for outstanding rent in the amount of \$2468.61 for the period of 1-September to 7-December-2023.

25. The tenant shall pay a daily rate of \$31.23 until such time as the landlord regains possession of the property.

Decision

26. The landlord's claim for rent succeeds in the amount of \$2,468.61

Issue # 3: Hearing expenses \$20.00

27. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#3).

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

Decision

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

Issue # 4: Security deposit applied against monies owed \$350.00

Analysis

30. Section 14 of the *Residential Tenancies Act, 2018* states:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.
- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
- (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.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

31. The landlord's claim for losses has been successful as per paragraph 26 and as such the security deposit shall be applied against monies owed.

Decision

32. The landlord's claim for security deposit to be applied against monies owed succeeds.

Summary of Decision

33. The tenant shall pay the landlord \$2013.61 as follows:

Rent	\$2468.61
Hearing expenses.....	20.00
Less Security deposit	<u>\$475.00</u>

Total..... \$2013.61

34. The tenant shall pay a daily rate of rent beginning 8-December-2023 of \$31.23, until such time as the landlord regains possession of the property.

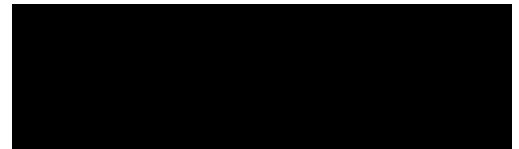
35. The tenant shall vacate the property immediately.

36. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

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

December 14, 2023

Date



Pamela Pennell
Residential Tenancies Office