

Residential Tenancies Tribunal

Application 2023-1088-NL

Decision 23-1088-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:58 p.m. on 23-January-2024.
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" 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 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 landlords submitted an affidavit with their application stating that they utilized the services of a process server to serve the tenant with the notice of hearing personally at the residential premises on 11-January-2024 (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 landlords, I proceeded with the hearing in her absence.
5. There is a written term rental agreement which commenced on 15-January-2023. Rent is \$950.00 per month due on the first of each month. A security deposit of \$475.00 was paid on 11-January-2023 and is in the landlord's possession.

Issues before the Tribunal

6. The landlords are seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$3800.00

- Hearing expenses \$70.00
- Security deposit applied against monies owed \$475.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 19: Notice where failure to pay rent and Section 20: Notice where material term of an agreement contravened. Also, relevant and considered is Section 12-1 of the *Residential Tenancies Policy Manual: Recovery of Fees*.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

9. The landlords submitted a termination notice under Section 20: Notice where material term of agreement contravened. The notice is signed and dated for 15-August-2023, with a termination date of 30-September-2023 (LL#2).

Landlord's Position:

10. The landlords testified that the tenant contravened the rental agreement by bringing a dog(s) into the unit. The landlords submitted a copy of the rental agreement showing that there was a *no pet policy* agreed upon at the beginning of the tenancy by the tenant (LL#3). The landlords testified that they were informed by the tenant's neighbors that she had at least one dog on the premises and maybe 2. The landlords testified that the dog(s) was disturbing the neighbors and the landlords testified that they gave a written notice to the tenants requesting that she remove the dog(s) from the premises immediately on 16-July-2023.

Analysis

11. Section 20 of the *Residential Tenancies Act, 2018* states:

Notice where material term of agreement contravened

20. (2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes a material term of a rental agreement, the landlord may give the tenant written notice of the contravention, and if the tenant fails to remedy the contravention within a reasonable time after the notice has been served, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises.

(3) Where the landlord gives a tenant notice under subsection (2) that a rental agreement is terminated, the notice shall be given

(b) not less than one month before the end of a rental period where the residential premises is

- rented from month to month,*
- rented for a fixed term, or*
- a site for a mobile home*

(4) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the person giving the notice;
- (b) be given not later than the first day of a rental period;
- (c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the date by which the tenant is required to vacate the residential premises; and
- (d) be served in accordance with section 35.

12. The landlords testified that they do not reside within the same community as their tenant and on 16-July-2023 they were informed by the tenant's neighbors that she had at least 1 dog staying on the premises and maybe a second. The landlords stated that the dog(s) was disturbing the neighbors and for that reason the neighbors reached out to them. The landlords stated that the tenant was made aware at the commencement of the tenancy that absolutely no pets were permitted on the premises, and testified that the tenant agreed to no pets as per Part 11 of the rental agreement signed by the tenant on 11-January-2023 (LL#3). The landlords testified that they gave a written notice to the tenant on 16-July-2023 requesting that the dog(s) be removed from the premises immediately. The landlord's stated that the tenant neglected to communicate with them leaving them with no choice but to give a termination notice on 7-August-2023, followed by a second termination notice on 15-August-2023 to vacate the unit on 30-September-2023.

13. I asked the landlords if the dog(s) is still in the unit and the landlords stated that they can't say for sure, but stated that they did receive an email from the tenant dated 20-August-2023 stating that the dog is gone (LL#4). The landlords stated that this email was in response to the second termination notice given on 15-August-2023.

14. The tenant was not available to confirm dates as to when the dog(s) arrived and when the dog(s) left the premises thus I can only rely on the testimony of the landlords and the exhibits entered into evidence by the landlords. I find that the tenant contravened her rental agreement by bringing a dog(s) onto the premises and I find that the tenant neglected to comply with the landlord's initial request to remove the dog(s) on 16-July-2023. The tenant did respond to the landlords second termination notice by email stating that the dog is now gone (LL#4). This response from the tenant was received via email on 20-August-2023 which is 35 days after the notice was given from the landlords to have the dog(s) removed from the premises immediately.

15. I find that by bringing a dog(s) into the unit in the first place was a contravention of a material term of the rental agreement under Section 20 of the *Residential Tenancies Act, 2018* as stated above. I accept that the landlord gave the tenant a notice on 16-July-2023 to remove the dog(s) from the premises immediately as per the rental agreement in place. Also, I accept that the dog(s) was removed from the premises on 20-August-2023 as per a copy of an email from the tenant, however I find that the landlords were within their right to give the tenant a termination notice under Section 20 of the Act. The dog(s) was not removed immediately as requested by the landlords on 16-July and the tenant neglected to communicate with the landlords.

16. The second termination notice was given on 15-August-2023 to vacate on 30-September-2023 which falls under the terms of not less than 1 month before the end of the rental period after the notice is served as stated above. I find that the termination notice is a valid notice.

Decision

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

Issue # 2: Rent paid \$3800.00

Relevant Submission

18. The landlords testified that rent is outstanding in the amount of \$3800.00 for the months of October to January. The landlords submitted a copy of the rental ledger to support their claim (LL#5). See copy of ledger below:

| | | | | |
|-----------|---------------|-----------|----------|------------|
| Sept 1/23 | Sept rent | \$ 950.00 | = 950.00 | 0 |
| Oct 1/23 | Oct rent | = 950.00 | 0 | \$ 950.00 |
| Nov 1/23 | Nov rent | = 950.00 | 0 | \$ 1900.00 |
| Dec 1/23 | Dec rent | = 950.00 | 0 | \$ 2850.00 |
| Jan 1/24 | Jan rent 2024 | = 950.00 | 0 | \$ 3800.00 |

Landlord's Position

19. The landlords testified that rent is outstanding in the amount of \$3800.00 for the period of 1-October-2023 to 31-January-2024. The landlord is seeking rent to be paid in full.

Analysis

20. 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

21. Non-payment of rent is a violation of the rental agreement. The tenant is required to pay rent to the landlord for the use or occupancy of the residential premises. The rental ledger is amended to show a daily rate for January as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-October to 23-January in the amount of \$3568.29.

| Amended Rental Ledger 2023-1088NL | | | |
|-----------------------------------|----------|----------|------------|
| Date | Action | Amount | Total |
| Sepember30, 2023 | | Balance | \$0.00 |
| October 1, 2023 | Rent due | \$950.00 | \$950.00 |
| November 1, 2023 | Rent due | \$950.00 | \$1,900.00 |
| December 1, 2023 | Rent due | \$950.00 | \$2,850.00 |
| Janauary 1-23, 2024 | Rent due | \$718.29 | \$3,568.29 |

Daily rate: $\$950 \times 12 \text{ mths} = \11400
 $\$11400 / 365 \text{ days} = \31.23 per day

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

Decision

23. The landlord's claim for rent succeeds in the amount of \$3568.29.

Issue # 3: Hearing Expenses \$70.00

24. Section 12-1 of the *Residential Tenancies Policy Manual* states:

Recovery of Fees

12-1 Application fees for adjudication of a dispute in excess of the security deposit is allowable and other allowable hearing expenses include the cost of hiring a process server to personally serve a claim.

25. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#6). The landlord also utilized the services of a *Process Server* to serve the tenant. The fee charged by the process server was \$50.00 (LL#7).

26. As the landlord's claim has been successful, the tenant shall pay the \$70.00.

Decision

27. The landlord's claim for hearing expenses succeeds in the amount of \$70.00.

Issue # 4: Security deposit applied against monies owed \$475.00

Analysis

28. 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).

29. The landlord's claim for losses has been successful as per paragraphs 23 and 27, and as such the security deposit shall be applied against monies owed.

Decision

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

Summary of Decision

31. The tenant shall pay the landlord \$3163.29 as follows:

| | |
|-----------------------------------|-----------------------------|
| Rent | \$3568.29 |
| Hearing expenses | 70.00 |
| Less security deposit..... | \$475.00 |
| Total..... | <u>\$3163.29</u> |

32. The tenant shall pay a daily rate of rent beginning 24-January-2024 of \$31.23, until such time as the landlords regain possession of the property.

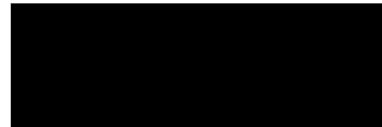
33. The tenant shall vacate the property immediately.

34. 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.

35. The landlords will be awarded an Order of Possession.

January 30, 2024

Date



Pamela Pennell
Residential Tenancies Office