

Residential Tenancies Tribunal

Application 2023-1156-NL

Decision 23-1156-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 19-December-2023.
2. The applicant, [REDACTED] and [REDACTED] hereinafter referred to as "the landlords", attended the hearing by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend the hearing.

Preliminary Matters

4. The respondent was not present at the hearing and I reached her by telephone at the start of the hearing, however she refused to attend 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 hired a process server to serve the tenant with the notice of hearing. The document was served on 6-December-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 landlords, I proceeded with the hearing in her absence.
5. There is a written month to month rental agreement which commenced on 1-January - 2020. Rent is \$800.00 per month, due on the first of the month. A security deposit of \$600.00 was paid on 1-January-2020 and is in the landlord's possession.
6. The security deposit will be dealt with in this decision, in the event that a vacant possession order is granted. The security deposit will be applied against any monies owed.

Issues before the Tribunal

7. The landlord is seeking:
 - An order for vacant possession of the rented premises
 - Hearing expenses \$88.75
 - Security deposit applied against monies owed.

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 is the following section of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 18: Notice of termination of rental agreement. Also, relevant and considered is the following section of the *Residential Tenancies Policy Manual*; Section 12-1: Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

10. The landlords submitted a copy of a termination notice issued to the tenant on a *Landlord's Notice to Terminate – Standard form (LL#2)*. It was dated for 26-August-2023 under section 18; Notice of termination of rental agreement to vacate the premises by 30-November-2023.

Analysis

11. The notice was served under Section 18, of the *Residential Tenancies Act, 2018*, which states:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) *not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*
- (b) *not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*
- (c) *not less than 3 months before the end of the term where the residential premises is rented for a fixed term.*

.....

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

- (a) *be signed by the person providing 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 tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

12. The termination notice submitted by the landlords meets the requirements of not less than 3 months before the end of a rental period where the residential premises is rented month to month. In accordance with the *Residential Tenancies Act, 2018* the termination notice is a valid notice.

13. I find that the tenant should have vacated the premises by 30-November-2023

Decision

14. The landlords claim for an order of vacant possession succeeds.

15. The tenant shall vacate the premises immediately.

16. 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.

Item # 2: Hearing Expenses \$88.75

17. The landlord paid an application fee of \$20.00 to *Residential Tenancies*. The landlord also incurred a cost from the process server for serving the document, stamping the affidavit and other related fees in the amount of \$68.75 and provided a copy of the invoice (LL#3).

18. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. Also, the cost of hiring a process server to personally serve a claim is an allowable hearing expense, the \$68.75 shall be awarded.

19. I find that the tenant is responsible in part for the hearing expenses claimed.

Decision

20. The landlord's claim for hearing expenses succeeds in the amount of \$68.75.

Item #3: Security deposit applied against monies owed - \$600.00.

Analysis

21. 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).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

22. The landlord's claim for hearing expenses has been partially successful as per paragraph 20, and as such the security deposit shall be partially applied against monies owed.

Decision

23. The security deposit shall be applied against monies owed in the amount of \$68.75.

Summary of Decision:

22. The tenant shall pay the landlords \$0.00 as follows:

Hearing expenses.....	\$68.75
Less partial security deposit	\$68.75
 Total	 \$0.00

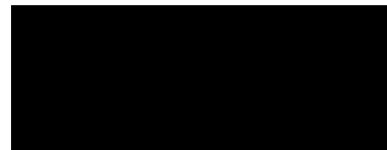
24. The tenant shall vacate the premises immediately.

25. 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.

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

January 2, 2024

Date



Pamela Pennell
Residential Tenancies Office