

Residential Tenancies Tribunal

Application 2023-1159-NL

Decision 23-1159-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 3-January-2024.
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 him 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 he has been properly served. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of hearing via pre-paid registered mail [REDACTED] on 15-December-2023 (LL#1). Canada Post tracking indicates that the mail was not retrieved. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served after 5 days. 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 his absence.
5. There is a written month to month rental agreement which commenced on 1-June-2019. Rent is \$263.00 per month due on the first of each month. A security deposit was never received.
6. The landlord amended the application to increase rent from \$1448.00 as per the application to \$1974.00 to include outstanding rent for December and January and to seek hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$1974.00
 - 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 is the following section 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 termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 11-October-2023, with a termination date of 31-October-2023 (LL#2).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since 1-June-2023, and no payments have been made since that time resulting in an outstanding amount of \$1974.00.

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, 31-October-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 31-October-2023.

Decision

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

Issue # 2: Rent paid \$1974.00

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$1974.00 dating back to 1-June 2023. The landlord submitted a copy of the rental ledger to support their claim (LL#3). See breakdown of ledger below:

Rental Ledger 2023-1159-NL			
Date	Action	Amount	Total
May 31, 2023	Balance		-\$130.00
June 1, 2023	Rent due	\$263.00	\$133.00
July 1, 2023	Rent due	\$263.00	\$396.00
August 1, 2023	Rent due	\$263.00	\$659.00
September 1, 2023	Rent due	\$263.00	\$922.00
October 1, 2023	Rent due	\$263.00	\$1,185.00
November 1, 2023	Rent due	\$263.00	\$1,448.00
December 1, 2023	Rent due	\$263.00	\$1,711.00
January 1, 2024	Rent due	\$263.00	\$1,974.00

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$1974.00 for the period of 1-June-2023 to 31-January-2024. 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 \$1974.00 for the period of 1-June-2023 to 31-January-2024.

20. 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-June-2023 to 3-January-2024 in the amount of \$1736.95.

Amended Rental Ledger 2023-1159-NL			
Date	Action	Amount	Total
May 31, 2023	Balance		-\$130.00
June 1, 2023	Rent due	\$263.00	\$133.00
July 1, 2023	Rent due	\$263.00	\$396.00
August 1, 2023	Rent due	\$263.00	\$659.00
September 1, 2023	Rent due	\$263.00	\$922.00
October 1, 2023	Rent due	\$263.00	\$1,185.00
November 1, 2023	Rent due	\$263.00	\$1,448.00
December 1, 2023	Rent due	\$263.00	\$1,711.00
January 1-3	Rent due	\$25.95	\$1,736.95

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 \$1736.95 for the period of 1-June-2023 to 3-January-2024.

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 \$1736.95.

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 \$1756.95 as follows:

Rent	\$1736.95
Hearing expenses.....	20.00
Total.....	<u>\$1756.95</u>

28. The tenant shall pay a daily rate of rent beginning 4-January-2024 of \$8.65, until such time as the landlord regains possession of the property.

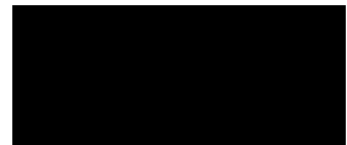
29. The tenant shall vacate the property immediately.

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 10, 2024

Date



Pamela Pennell
Residential Tenancies Office