

Residential Tenancies Tribunal

Application 2023-1191-NL

Decision 23-1191-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 16-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference. [REDACTED] also attended.
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 landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing personally at the residential premises on 19-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 landlord, I proceeded with the hearing in her absence.
5. There was initially a verbal month to month rental agreement which commenced in the summer of 2019, which got written in August 2020. Rent is \$1000.00 per month due on the first of each month. A security deposit of \$500.00 was paid on 8-July-2020 and is in the landlord’s possession.
6. The landlord amended the application to increase rent from \$2000.00 as per the application to \$3000.00 to include outstanding rent up to 31-January-2024, and to apply the security deposit against monies owed.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$3000.00
 - Security deposit applied against monies owed \$500.00

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. Also, relevant and considered is Section 12-1 of the *Residential Tenancies Policy Manual*: Fees.

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 18-December-2023, with a termination date of 29-December-2023 (LL#2).

Landlord's Position:

11. The landlord testified that rent has been in arrears since 1-November 2023, and he is seeking vacant possession.

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 5 days when the termination notice was served. On the date of termination, 29-December-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 29-December-2023.

Decision

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

Issue # 2: Rent paid \$3000.00

Relevant Submission

16. The landlord testified that rent is outstanding in the amount of \$3,000.00 for the period of 1-November-2023 to 31-January-2024. The landlord submitted a copy of the rental ledger to support his claim (LL#3). See breakdown of ledger below:

Rental Ledger 2023-1191-NL			
Date	Action	Amount	Total
October 31, 2023	Balance		\$0.00
November 1, 2023	Rent due	\$1,000.00	\$1,000.00
December 1, 2023	Rent due	\$1,000.00	\$2,000.00
January 1, 2024	Rent due	\$1,000.00	\$3,000.00

Landlord's Position

17. The landlord testified that rent is outstanding in the amount of \$3,000.00 for the period of 1-November 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 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-November to 16-January in the amount of \$2,526.08.

Amended Rental Ledger 2023-1191-NL			
Date	Action	Amount	Total
October 31, 2023	Balance		\$0.00
November 1, 2023	Rent due	\$1,000.00	\$1,000.00
December 1, 2023	Rent due	\$1,000.00	\$2,000.00
January 1-16, 2024	Rent due	\$526.08	\$2,526.08

Daily rate: \$1000 x 12 mths = \$12000
\$12000 / 365 days = \$32.88 per day

20. The tenant shall pay a daily rate of \$32.88 until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for rent succeeds in the amount of \$2,526.08.

Issue # 3: Security deposit applied against monies owed \$500.00

Analysis

22. 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).

23. The landlord's claim for losses has been successful as per paragraph 21, and as such the security deposit shall be applied against monies owed.

Decision

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

Summary of Decision

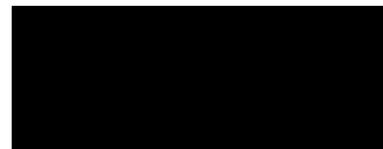
25. The tenant shall pay the landlord \$2026.08 as follows:

Rent	\$2526.08
Less security deposit.....	<u>\$500.00</u>
Total.....	<u>\$2026.08</u>

26. The tenant shall pay a daily rate of rent beginning 17-January-2024 of \$32.88, until such time as the landlord regains possession of the property.
27. The tenant shall vacate the property immediately.
28. 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.
29. The landlord will be awarded an Order of Possession.

January 26, 2024

Date



Pamela Pennell
Residential Tenancies Office