

## **Residential Tenancies Tribunal**

Application 2023-1199-NL

Decision 23-1199-00

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 1:51 p.m. on 24-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "the tenants" attended by teleconference.

### **Preliminary Matters**

4. The landlord submitted 2 affidavits with his application stating that he had served the tenants with the notice of hearing electronically through email on 11-January-2024 (LL#1). Both respondents confirmed receiving the documents on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written fixed rental agreement which is now a month to month tenancy which commenced on 1-September-2021. Rent is \$900.00 per month due on the first of each month. A security deposit of \$675.00 was paid on 6-August-2021 and is in the landlord's possession.
6. The landlord amended the application to increase rent from \$1800.00 as per the application to \$2700.00 to include outstanding rent up to 31-January-2024, 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 \$2700.00
  - Hearing expenses \$20.00
  - Security deposit applied against monies owed \$675.00

## **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: Recovery of Fees.

### **Issue # 1: Vacant Possession of the Rented Premises**

#### Relevant Submissions:

10. The landlord submitted a copy of a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 16-November-2023, with a termination date of 27-November-2023 (LL#2).

#### Landlord's Position:

11. The landlord testified that rent is outstanding in the amount of \$2700.00 for the period of 1-November-2023 to 31-January -2024.

#### Tenant's Position

12. The tenants did not dispute that rent is outstanding in the amount of \$2700.00.

## **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. The tenants were in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 27-November-2023 the tenants were 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.

15. I find that the tenants should have vacated the property by 27-November-2023.

### **Decision**

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

### **Issue # 2: Rent paid \$2700.00**

#### **Relevant Submission**

17. The landlord testified that rent is outstanding in the amount of \$2700.00 and submitted a copy of the rental ledger to support his claim (LL#3). See breakdown of ledger below:

Rental Ledger 2023-1199-NL			
Date	Action	Amount	Total
October 31, 2023	Balance	\$0.00	\$0.00
November 1, 2023	Rent due	\$900.00	\$900.00
December 1, 2023	Rent due	\$900.00	\$1,800.00
January 1, 2024	Rent due	\$900.00	\$2,700.00

#### **Landlord's Position**

18. The landlord testified that rent is outstanding in the amount of \$2700.00 for the period of 1-november to 31-January-2024. The landlord is seeking rent to be paid in full.

#### **Tenant's Position**

19. The tenants agreed that rent is outstanding in the amount of \$2700.00 and stated that they were unable to pay rent as one of the tenants were hospitalized and the other was unemployed.

### **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. Rent is required to be paid for the use or occupancy of a residential premises. I accept that the tenants fell on hard times and paying rent became difficult for them, but tenants cannot stay in units for months without paying rent.
22. The rental ledger is amended to show a daily rate for January as this tribunal does not consider future rent (see below):

Amended Rental Ledger 2023-1199-NL			
Date	Action	Amount	Total
October 31, 2023	Balance	\$0.00	\$0.00
November 1, 2023	Rent due	\$900.00	\$900.00
December 1, 2023	Rent due	\$900.00	\$1,800.00
January 1-24, 2024	Rent due	\$710.16	\$2,510.16

Daily rate:  $\$900 \times 12 \text{ mths} = \$10800$   
 $\$10800 / 365 \text{ days} = \$29.59 \text{ per day}$

23. I find that the tenants are responsible for outstanding rent in the amount of \$2510.16 for the period of 1-November to 24-January-2024.
24. The tenants shall pay a daily rate of \$29.59 until such time as the landlord regains possession of the property.

## Decision

25. The landlord's claim for rent succeeds in the amount of \$2510.16.

**Issue # 3: Hearing expenses \$20.00**

26. The landlord paid an application fee of \$20.00 to Residential Tenancies and provided a copy of the receipt (LL#4).
27. As the landlord's claim has been successful, the tenants shall pay the \$20.00.

**Decision**

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

**Issue # 4: Security deposit applied against monies owed \$675.00**

**Analysis**

29. 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).

30. The landlord's claim for losses has been successful as per paragraphs 25 and 28, and as such the security deposit shall be applied against monies owed.

**Decision**

31. The landlord's claim to have the security deposit applied against monies owed succeeds.

### **Summary of Decision**

32. The tenants shall pay the landlord \$1855.16 as follows:

Rent .....	\$2510.16
Hearing expenses.....	20.00
<b>Less security deposit.....</b>	<b><u>\$675.00</u></b>
<b>Total.....</b>	<b><u>\$1855.16</u></b>

33. The tenants shall pay a daily rate of rent beginning 25-January-2024 of \$29.59, until such time as the landlord regains possession of the property.

34. The tenants shall vacate the property immediately.

35. The tenants 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.

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

January 31, 2024

Date

Pamela Pennell  
Residential Tenancies Office