

Residential Tenancies Tribunal

Application 2024-0073-NL &
2024-0104-NL

Decision 2024-0073-00 &
2024-0104-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was call at 9:22 AM on 14 February 2024 via teleconference. The hearing was to adjudicate two separate applications: 2024-0073-NL and 2024-0104-NL.
2. [REDACTED] hereinafter referred to as “the landlord”, attended the hearing. The landlord did not call any witnesses.
3. [REDACTED] hereinafter referred to as “tenant1”, attended the hearing. [REDACTED] hereinafter referred to as “tenant2”, attended the hearing. [REDACTED] hereinafter referred to as “tenant3”, attended the hearing. The tenants did not call any witnesses.

Preliminary Matters

4. The landlord submitted affidavits (**Exhibit L # 1**) indicating tenant2 was served in person with notification of the hearing on 2 February 2024 at approximately 12:15 PM at [REDACTED]. Tenant1 and tenant3 were served by the landlord issuing copies of the Application for Disputer Resolution to tenant2 on 2 February 2024. The tenants did not dispute receipt of notifications as stated.
5. The landlord did seek an amendment to his application to include rental arrears owing to include for January and February 2024.
6. The tenants did not provide an affidavit of service with their application. The landlord stated he received the tenants application on 11 February 2024 and waived his 10 day rule of service. The tenants were seeking a validity of termination notice and did not amend their application.
7. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

8. The landlord is seeking the following:

1. Rental arrears in the amount of \$20,100.00; &
2. Premises vacated of the [REDACTED] NL

9. The tenants are seeking the following:

1. Validity of termination notice.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of *"the Act"*.
11. Also relevant and considered in this case are sections 10, 14, 19, 31 and 34 of the *Residential Tenancies Act, 2018*.

Issue 1: Rental Arrears- \$20,100.00

Landlord Position

12. The landlord testified there is a verbal monthly rental agreement in place for the rental property at [REDACTED] and stated the rental unit is a home with attached bachelorette apartment attached to the home. The landlord stated tenant1 and tenant2 reside in the home and tenant3 resides in the attached bachelorette [REDACTED] with rent set at \$2,000.00 per month for the entire property. There was no security deposit collected on this tenancy and all three tenants have resided at the rental since 15 March 2020.
13. The landlord stated the rental agreement is one which the tenants are responsible to pay for their own utilities. He did testify that on the property was a workshop which the tenants could use. The rental agreement was one where rent was due on the first of each month, however the landlord stated the tenants had requested to pay rent on a bi-weekly basis which he agreed to.
14. The landlord summarized the tenants rental payments as appropriate, however he noticed in January 2021, the tenants began incurring rental arrears. The landlord testified he attempted to work with the tenants with re-payment plans with the most recent being in August 2023, to no avail.
15. The landlord stated the last payment he received from the tenants was in the amount of \$400.00 on 14 December 2023 and the last time the tenants held a zero balance was in December 2020. The landlord issued the tenants a Landlord's Notice to Terminate Early- Cause on 23 January 2024 by posting the notice on the front entry way of the

rental, with a request for the tenants to vacate the premises by 3 February 2024 (**Exhibit L # 2**).

16. The landlord is seeking rental arrears in the amount of \$20,100.00 to include up until 29 February 2024 as they remain in the rental property on the date of the hearing (14 February 2024).
17. The landlord testified for 2021, he should have received \$24,000.00 from the tenants for rent and received \$17,650.00; for 2022, he should have received \$24,000.00 from the tenants for rent and received \$19,850.00; and, for 2023, he should have received \$24,000.00 from the tenants for rent and received \$18,400.00. Along with his application, the landlord also provided a payment ledger of the tenants since being occupants at the rental address in March 2020 (**Exhibit L # 3**). This piece of evidence provides the following summary information:

Year	Amount Due	Amount Paid	Balance
2020 (10 Months)	\$20,000.00	\$20,000.00	\$0.00
2021 (12 Months)	\$24,000.00	\$17,650.00	\$6,350.00
2022 (12 Months)	\$24,000.00	\$19,850.00	\$10,500.00
2023 (12 Months)	\$24,000.00	\$18,400.00	\$16,100.00
2024- January	\$2,000.00	\$0.00	\$18,100.00

18. As indicated in paragraph 5, the landlord is also seeking rental arrears owing for February 2024.

Tenant Position

19. Tenant1 offered testimony and did not dispute being issued the termination notice as suggested by the landlord. Tenant1 did not dispute that there are rental arrears owing, however did dispute the amount as suggested by the landlord. She agreed that arrears has continued to incur and stated “we should get a percentage of refund” as she stated the rental property was falsely advertised. Tenant1 stated they had relocated from Ontario in March 2020 after viewing the rental in an advertisement, with a belief they would have full access to the workroom to operate a home-based business. Since being occupants of [REDACTED] tenant1 stated they do not have full access to the workroom.
20. Tenant2 did not dispute being issued the termination notice as suggested by the landlord. Tenant2 did not dispute that there are rental arrears owing but did dispute the amount suggested by the landlord. Tenant2 testified he did not feel that they owed the amount claimed due to the claim it was “false advertising. I do not have full access to the workroom” and stated they entered into the rental agreement with the understanding to have full access to the workroom to operate a home-based business.
21. Tenant3 did not offer any testimony in relation to rental arrears. He did offer that due to health conditions he has experienced over the last two years, he leaves the payment of rent to tenant1.

Analysis

22. Non-payment of rent is a violation of the rental agreement. The landlord has amended the claim at the outset to add rent to include rent up until February 2024. This tribunal does not consider future rent.
23. The landlord submitted termination Notice under Section 19, notice where failure to pay rent with a requested possession of the premises by 3 February 2024 (**Exhibit L # 2**). As such, rent was due 1 February 2024 and rental arrears owing by the tenant equaling **\$20,100.00** including up to 29 February 2024.
24. Rent for February 2024 can only be calculated up to and including the day of the hearing (14 February 2024). That calculation is ($\$2000.00 \times 12 \text{ months} = \$24,000.00 \div 366 \text{ days} = \$65.57 \text{ per day} \times 14 \text{ days} = \917.98). Rent for 1 February 2024 – 14 February 2024 is **\$917.98**.
25. I accept the landlord's claim that the tenants have not paid rent as required. The tenants owe \$19,017.98. Current Balance of rental arrears is **\$19,017.98**.
26. Additionally, the tenants are responsible for rent on a daily basis in the amount of \$ **65.57** beginning on 15 February 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

27. The landlord's claim for a payment of the rent succeeds in the amount of **\$19,017.98**.

Issue 2: Vacant Possession of Rented Premises/Validity of Notice

28. The landlord submitted termination Notice under Section 19, notice where failure to pay rent. The notice was signed and dated on 23 January 2024 and requested possession of the premises by 3 February 2024 (**Exhibit L # 2**).

Analysis

29. Section 19 of the *Residential Tenancies Act*, 2018 states:

- a. **Notice where failure to pay rent**

- b. **19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**

- i. **(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

c. 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.

i. (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.

30. The tenant had been in rental arrears in excess of the 5 days when the notice was served on 23 January 2024 to be out of [REDACTED] NL on 3 February 2024. The tenants remain in the property following being issued the notice to vacate and tenant1 did not dispute receiving the termination notice as she claimed her, "husband took the notice off the door". The termination notice is a valid notice.

31. The tenants were seeking an application for validity of notice. The landlord has provided evidence the tenants have not paid rent as required in a tenancy and were issued termination notice in the manner required under the *Residential Tenancies Act*, 2018.

Decision

32. The landlord's claim for an order for vacant possession succeeds and the tenants claim for validity of notice fails.

Issue # 3- Hearing Expenses- \$20.00

33. The landlord paid an application fee of \$20.00 (**Exhibit L # 4**).

34. As the landlord's claim has been partially successful, the tenants shall pay the \$20.00.

Decision

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

Summary of Decision

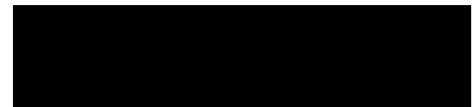
36. The landlord is entitled to the following:

- A payment of **\$19,037.98**, as determined as follows:
 - a) Rent owing\$19,017.98
 - b) Hearing Expenses.....\$20.00
 - c) Total.....**\$19,017.98**
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of **\$65.57**, beginning 15 February 2024 and continuing to the date the landlord obtains vacant possession of the rental unit,
- The tenants shall also 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.

37. The tenants claim for validity of termination notice fails.

5 March 2024

Date



Michael J. Reilly
Residential Tenancies Office