

Residential Tenancies Tribunal

Application 2024-0131-NL

Decision 24-0131-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 28-March-2024.
2. The applicant, [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 his application stating that he had the tenant served with the notice of hearing personally on 17-March-2024 (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 his absence.
5. There is a written month-to-month rental agreement which commenced on 1-January-2015. Rent is \$1050.00 per month, due on the first of each month. A security deposit of \$500.00 was paid on 1-January-2015 and is in the landlord’s possession.
6. The landlord amended the application to increase rent from \$12600.00 as per the application to \$13500.00 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 \$13500.00
 - 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.

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 23-January-2024, with a termination date of 4-February-2024 (LL#2). The landlord testified that he had the termination notice served personally to the tenant by giving it the tenant's son who is over the age of 16 at the residential premises on 23-January-2024.

Landlord's Position:

11. The landlord testified that rent has been in arrears since 1-January- 2023, and although payments have been made the tenant continued to carry a negative balance resulting in an outstanding amount of \$13500.00.

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, 4-February-2024 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 4-February-2024.

Decision

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

Issue # 2: Rent Paid \$13500.00

Relevant Submission

16. The landlord testified that rent is outstanding in the amount of \$13500.00 dating back to January 2023. The landlord submitted a copy of the rental ledger to support his claim (LL#3). See breakdown of ledger below:

Rental Ledger 2024-0131-NL			
Date	Action	Amount	Total
December 31, 2022	Balance		\$0.00
January 1, 2023	Rent due	\$1,050.00	\$1,050.00
February 1, 2023	Rent due	\$1,050.00	\$2,100.00
March 1, 2023	Rent due	\$1,050.00	\$3,150.00
March 1, 2023	Payment	-\$1,200.00	\$1,950.00
April 1, 2023	Rent due	\$1,050.00	\$3,000.00
April 1, 2023	Payment	-\$1,050.00	\$1,950.00
May 1, 2023	Rent due	\$1,050.00	\$3,000.00
June 1, 2023	Rent due	\$1,050.00	\$4,050.00
July 1, 2023	Rent due	\$1,050.00	\$5,100.00
August 1, 2023	Rent due	\$1,050.00	\$6,150.00
September 1, 2023	Rent due	\$1,050.00	\$7,200.00
October 1, 2023	Rent due	\$1,050.00	\$8,250.00
November 1, 2023	Rent due	\$1,050.00	\$9,300.00
December 1, 2023	Rent due	\$1,050.00	\$10,350.00
January 1, 2024	Rent due	\$1,050.00	\$11,400.00
February 1, 2024	Rent due	\$1,050.00	\$12,450.00
March 1, 2024	Rent due	\$1,050.00	\$13,500.00

Landlord's Position

17. The landlord testified that rent is outstanding in the amount of \$13500.00 for the period of 1-January-2023 to 31-March-2024. The landlord is seeking rent to be paid in full.

Analysis

18. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises.
19. The rental ledger is amended to show a daily rate for March as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-January-2023 to 28-March-2024 in the amount of \$13414.04.

Amended Ledger 2024-0131-NL			
Date	Action	Amount	Total
December 31, 2022	Balance		\$0.00
January 1, 2023	Rent due	\$1,050.00	\$1,050.00
February 1, 2023	Rent due	\$1,050.00	\$2,100.00
March 1, 2023	Rent due	\$1,050.00	\$3,150.00
March 1, 2023	Payment	-\$1,200.00	\$1,950.00
April 1, 2023	Rent due	\$1,050.00	\$3,000.00
April 1, 2023	Payment	-\$1,050.00	\$1,950.00
May 1, 2023	Rent due	\$1,050.00	\$3,000.00
June 1, 2023	Rent due	\$1,050.00	\$4,050.00
July 1, 2023	Rent due	\$1,050.00	\$5,100.00
August 1, 2023	Rent due	\$1,050.00	\$6,150.00
September 1, 2023	Rent due	\$1,050.00	\$7,200.00
October 1, 2023	Rent due	\$1,050.00	\$8,250.00
November 1, 2023	Rent due	\$1,050.00	\$9,300.00
December 1, 2023	Rent due	\$1,050.00	\$10,350.00
January 1, 2024	Rent due	\$1,050.00	\$11,400.00
February 1, 2024	Rent due	\$1,050.00	\$12,450.00
March 1-28, 2024	Rent due	\$964.04	\$13,414.04

Daily rate: $\$1050 \times 12 \text{ mths} = \12600
 $\$12600 / 366 \text{ days} = \34.43 per day

20. The tenant shall pay a daily rate of \$34.43 until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for rent succeeds in the amount of \$13414.04.

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 11, and as such the security deposit shall be applied against monies owed.

Decision

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

Summary of Decision

25. The tenant shall pay the landlord \$12914.04 as follows:

Rent	\$13414.04
Less security deposit	500.00
Total.....	<u>\$12914.04</u>

26. The tenant shall pay a daily rate of rent beginning 29-March-2024 of \$34.43, until such time as the landlord regains possession of the property.

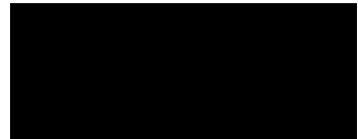
27. The tenant shall vacate the property immediately.

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.

April 5, 2024

Date



Pamela Pennell
Residential Tenancies Office