

Residential Tenancies Tribunal

Application 2024-0143-NL

Decision 2024-0143-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 19 March 2024 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "tenant1", did not attend the hearing, nor was she represented. Fifteen minutes of grace of was extended. I attempted to contact tenant1 by telephone ([REDACTED]) prior to the start of the hearing at 1:47 PM but was unsuccessful. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the 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 they have been properly served. The landlord submitted an affidavit with his application and testified during the hearing that tenant1 was served on 28 February 2024 via registered mail ([REDACTED]). As tenant1 was properly served, and as further delay in the proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
4. The respondent, [REDACTED], hereinafter referred to as "tenant2", attended the hearing. The landlord submitted an affidavit stating that tenant2 was served on 28 February 2024 via registered mail ([REDACTED]). Tenant2 confirmed receipt.

Preliminary Matters

8. The details of the claims were presented as an initial written agreement beginning in June 2019, that turned into a verbal monthly rental agreement with rent set at \$1,100.00, and due on the 15th of each month. There was no security deposit collected on this tenancy.
9. The tenants initially moved into the rental unit located at [REDACTED] in June 2019. Tenant1 provided one month notice in February 2024, [REDACTED]

which the landlord testified that he accepted and originally assumed that applied to all parties and that they would be vacating the premises; however, tenant2 remains in the property, along with his mother, at the date of the hearing. Tenant2 testified that he was unaware that one party to a rental agreement could break the agreement, and he was of the understanding through discussions with the landlord that he would work with him to determine what would work best. These continued discussions, and the expectation that rent would continue, constitutes an implied rental agreement between the landlord and tenant2. Given the circumstances, the application for dispute resolution is amended, and tenant1 [REDACTED] is removed as a respondent to this case.

10. The landlord amended his application at the hearing to include rental arrears owing to also include the month beginning on 15 March 2024.

Issues before the Tribunal

11. The landlord is seeking the following:

- An order for vacant possession of the rented premises; and
- An order for payment of rent in the amount of \$1,100.00.

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018. Also, relevant and considered in this case are sections 14, 19, 34, 35, and 42 of the Act.

Issue 1: Vacant Possession of Rented Premises

13. The landlord provided evidence that he issued a termination notice (Exhibit L#1) on 22 February 2024 to terminate the tenancy on 6 March 2024 under section 19 of the *Residential Tenancies Act*, 2018 by email and text, which were noted as received.

Analysis

14. 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.*

15. Tenant2 has been in rental arrears in excess of 5 days when the notice was served on 22 February 2024 to be out of [REDACTED], by 6 March 2024. The notice meets all other requirements as per the *Act* in that: it was signed by the landlord; stated the termination date more than 10 days after notice was served; and the notice itself was properly served. Tenant2 remains in the property following being issued the notice to vacate.

16. I find the termination notice is a valid notice, and the tenant should have vacated the property on 22 February 2024.

Decision

17. The landlord's claim for an order for vacant possession succeeds.

Issue 2: Rent Owing- \$1,100.00

Landlord Position

18. The landlord testified that there was originally a written rental agreement which has since evolved into a verbal monthly agreement with the tenants who moved into the rental address in June 2019. The landlord stated tenant1 vacated the rental and another individual not on the rental agreement moved into [REDACTED] with tenant2.

19. The landlord testified that he did not receive rent (\$1,100.00/month) for the period 15 February 2024 to 14 March 2024; nor did he receive any rent for the month beginning 15 March 2024.

Tenant Position

20. Tenant2 testified there were rental arrears owing on the date of the hearing (19 March 2024) in the amount of \$1,100.00 for February 2024 and stated he did not pay rent for March 2024.

Analysis

21. Non-payment of rent is a violation of the rental agreement. The landlord has amended the claim at the outset to include rent to include rent for the month, beginning 15 March 2024.
22. Rent was due 15 February 2024 and rental arrears are owed by the tenant equaling **\$1,100.00** including up to 14 March 2024.
23. This tribunal does not consider future rent. Rent for March 2024 can only be calculated up to and including the day of the hearing (19 March 2024). That calculation is ($\$1,100.00 \times 12 \text{ months} = \$13,200.00 \div 366 \text{ days} = \$36.07 \text{ per day} \times 5 \text{ days} = \180.35). Rent for 15 March 2024 – 19 March 2024 is **\$180.35**.
24. I accept the landlord's claim that tenant2 has not paid rent as required. The current balance of rental arrears is **\$1,280.35**.

Decision

25. The landlord's claim for rental arrears succeeds in the amount of **\$1,280.35**.
26. Additionally, tenant2 is responsible for daily rent in the amount of **\$36.07** beginning on 20 March 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Summary of Decision

28. The landlord is entitled to:
 - Rental arrears in the amount of **\$1,280.35**
 - A payment of a daily rate of rent in the amount of **\$36.07**, beginning 20 March 2024 and continuing to the date the landlord obtains vacant possession of the rental unit,
 - An order for vacant possession of the rented premises,
 - The tenant 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.

26 April 2024

Date

Residential Tenancies Office