

Residential Tenancies Tribunal

Application 2024-0184-NL

Decision 2024-0184-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 25 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 “the tenant”, did not attend the hearing, nor was the tenant represented. Fifteen minutes of grace of was extended. I was unable to reach the tenant by telephone prior to the start of the hearing as there was no contact information available. 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 he personally served the tenant on 13 March 2024 at 3:15 PM an Application for Dispute Resolution (Exhibit L # 2). As the tenant 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 details of the claim was presented as a written monthly rental agreement with rent set at \$900.00 and due on the 1st of each month. There was no security deposit collected on this tenancy. The tenant initially moved into the rental unit located at [REDACTED] in January 2023 when an agreement was in place for two tenants. In February 2024, the rental agreement changed and she became the sole tenant of this agreement. The tenant remains in the property on the date of the hearing (25 March 2024).
5. The landlord issued a termination notice on 20 February 2024 to terminate the tenancy on 2 March 2024 under section 19 of the *Residential Tenancies Act*, 2018 by placing this notice on the entry way of the rental unit (**Exhibit L # 1**).

6. 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.

Preliminary Matters

7. The landlord amended his application at the hearing to include rental arrears owing to also include March 2024.
8. The landlord offered testimony during the hearing and did not call any witnesses.

Issues before the Tribunal

9. The landlord is seeking the following:
- An order for payment of rent in the amount of \$1,800.00;
 - An order for vacant possession of the rented premises; and
 - An order for hearing expenses in the amount of \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
11. Also relevant and considered in this case is S. 14, 19, 34, 35, and 42 of the *Residential Tenancies Act*, 2018 and rule 29 of the *Rules of the Supreme Court*, 1986.

Issue 1: Rent Owing- \$1,800.00

12. The landlord testified that there was originally a written agreement with the tenant's mother, who passed away, and in January 2024, the tenant requested to take over the rental agreement, which the landlord approved.
14. The landlord offered evidence that the tenant was issued a Landlord Notice to Terminate Early-Cause on 20 February 2024 (Exhibit L # 1) after not paying rent for February 2024.
15. Along with his application, the landlord provided a Rental Ledger (Exhibit L # 3). At the hearing, the landlord stated he was seeking rent up to 31 March 2024.

Analysis

16. 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 between 1 March 2024 and 31 March 2024. This tribunal does not consider future rent.
17. The landlord submitted Notice under Section 19 (**Exhibit L # 1**). As such, rent was due 1 February 2024 and rental arrears owing by the tenant equaling **\$900.00** including up to 29 February 2024.
18. Rent for March 2024 can only be calculated up to and including the day of the hearing (25 March 2024). That calculation is $(\$900.00 \times 12 \text{ months} = \$10,800.00 \div 366 \text{ days} = \$29.51 \text{ per day} \times 25 \text{ days} = \$737.75)$. Rent for 1 March 2024 – 25 March 2024 is **\$737.75**.
19. I accept the landlord's claim that the tenant has not paid rent as required. Current Balance of rental arrears is **\$1,637.75**.

Decision

20. The landlord's claim for rental arrears succeeds in the amount of **\$1,637.75**.
21. Additionally, the tenant is responsible for daily rent in the amount of **\$29.51** beginning on 26 March 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

22. The landlord submitted termination Notice under Section 19, in relation to the tenant's failure to pay rent (**Exhibit L # 1**).

Analysis

23. 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.

24. The tenant had been in rental arrears in excess of 5 days when the notice was served on 20 February 2024 to be out of [REDACTED], NL, by 2 March 2024. The tenant remains in the property following being issued the notice to vacate and has been charged additional rent.

25. I find the termination notice is a valid notice.

Decision

26. The landlord's claim for an order for vacant possession does succeed.

Issue 3: Hearing Expense

27. The landlord offered evidence of the application fee (**Exhibit L # 4**) and was seeking compensation.

28. As the landlord's application is successful, I find the claim for hearing expenses succeeds.

Decision

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

Summary of Decision

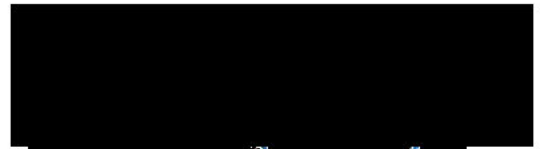
30. The landlord is entitled to the following:

- A payment of **\$1,657.75**, determined as follows:
 - a) Rent owing\$1,637.75
 - b) Hearing Expenses..... \$20.00
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of **\$29.51**, beginning 26 March 2024 and continuing to the date the landlord obtains vacant possession of the rental unit,

- 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.

30 April 2024

Date



Residential Tenancies Office