

Residential Tenancies Tribunal

Application 2024-0303-NL

Decision 24-0303-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:58 p.m. on 8-May-2024.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. [REDACTED] was also present as a support person.
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 their application stating that they had served the tenant with the notice of hearing personally at the residential premises on 15-April-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-July-2022. The property is a duplex with a shared common area outside. Rent is currently \$263.00 per month, due on the first of each month. A security deposit was never paid.
6. The landlord’s representative amended the application to increase rent from \$556.46 to \$819.46 to include outstanding rent for the month of May 2024.

Issues before the Tribunal

7. The landlord is seeking:
 - An order for vacant possession of the rented premises
 - Rent paid \$819.46.

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 22; Notice where tenant's obligation is not met and Section 10; Statutory Conditions.

Issue # 1: Vacant Possession of the Rental Premises

Relevant Submissions

10. The landlord submitted a copy of the termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#2). The notice was issued to the tenant on 26-March-2024 under Section 19; Failure to pay rent, Section 22; Notice where tenant's obligation is not met and Section 24; Interference with peaceful enjoyment and reasonable privacy. The termination date was listed as 1-April-2024.

Landlord's Position

11. The landlord's representative testified that she gave the tenant a termination notice under 3 different sections of the Act (Sections 19, 22 and 24) as she felt that each section was applicable in some manner to the current situation with the tenant.
12. With regards to Section 22, the landlord's representative testified that the tenant was not keeping the grounds around the premises clean, and the garbage has become a problem for the landlord and for the other tenants who share a common area around the exterior of the premises. The landlord's representative stated that she gave the tenant a written notice to clean the premises and remove a trampoline on 1-March-2024 (LL#3). The written notice requested the following to be completed by 8-March-2024:

- 1) *Pet / animal waste is to be cleaned up promptly and disposed of in a sanitary manner.*
- 2) *All garbage shall be properly wrapped and placed where directed by the landlord and all other refuse shall be disposed of in such manner and at such times as the landlord directs.*
- 3) *Trampoline is not permitted on the leased premises.*
- 4) *Clean up the unit and have all debris removed.*

13. The landlord's representative testified that she did not return to the premises on 8-March-2024 as per the notice but was a few days later getting back to follow up and testified that the tenant did not comply with the notice to clean up the exterior of the premises. The landlord's representative stated that not only did the tenant refuse to clean the area and remove the trampoline, but things had deteriorated.

Analysis

14. The relevant subsections of Section 22 of the *Residential Tenancies Act, 2018* state:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specific date not less than 5 days after the notice has been served.

16. The relevant subsections of Section 10 of the *Residential Tenancies Act, 2018* state:

Statutory Conditions

10. (2) *Obligation of the tenant* -The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or a person whom the tenant permits on the residential premises.

17. With regards to Section 22 as stated above, I accept the representative's testimony that the tenant was not fulfilling his obligation to keep the premises clean. The landlord's representative stated that there was a lot of garbage around the premises which was affecting other tenants who share a common space outside the duplex. I accept that the landlord was in her right to give the tenant a *request for repairs* form and further inspection of the area by the landlord showed that no attempts were made by the tenant to clean the unit within the time given, 8-March-2024. I accept the representative's testimony that the condition of the unit did not improve but rather deteriorated. I accept that the respondent did not fulfill his obligation as a tenant to keep the property clean and as such I find that the tenant has contravened Section 10-2 of the Act as stated above.

18. The termination notice was given on 26-March-2024 under Section 22; Notice where tenants obligation is not met to vacate the premises on 1-April-2024. The notice meets the requirements of the *Act* to move out not less than 5 days after the notice has been served. I find that the termination notice is a valid notice.

19. I find that the tenant should have vacated the premises by 1-April-2024.

Decision

20. The landlord's claim for vacant possession of the rented premises succeeds.

21. As vacant possession has been awarded under Section 22 of the *Act*, Sections 19 and 24 will not be analyzed for the purpose of this decision.

Issue # 2: Rent Paid \$819.46

Relevant Submission

22. The landlord's representative testified that rent is outstanding in the amount of \$819.46 dating back as far as April-2023 and they submitted a copy of the rental ledger to support the claim (LL#4). See breakdown of rental ledger below:

Transaction Date	Effective Date	Transaction Code	Description	Debit	Credit	Balance
01/04/2024	01/04/2024	PDEB	Periodic Debit	263.00		556.46
27/03/2024	22/03/2024	07	Bank Payment		520.00	293.46
01/03/2024	01/03/2024	PDEB	Periodic Debit	263.00		813.46
01/02/2024	01/02/2024	PDEB	Periodic Debit	263.00		550.46
17/01/2024	15/01/2024	07	Bank Payment		260.00	287.46
01/01/2024	01/01/2024	PDEB	Periodic Debit	263.00		547.46
11/12/2023	07/12/2023	07	Bank Payment		260.00	284.46
01/12/2023	01/12/2023	PDEB	Periodic Debit	263.00		544.46
07/11/2023	03/11/2023	07	Bank Payment		260.00	281.46
01/11/2023	01/11/2023	PDEB	Periodic Debit	263.00		541.46
04/10/2023	29/09/2023	07	Bank Payment		260.00	278.46
01/10/2023	01/10/2023	PDEB	Periodic Debit	263.00		538.46
06/09/2023	01/09/2023	07	Bank Payment		260.00	275.46
01/09/2023	01/09/2023	PDEB	Periodic Debit	263.00		535.46
03/08/2023	31/07/2023	07	Bank Payment		260.00	272.46
01/08/2023	01/08/2023	PDEB	Periodic Debit	263.00		532.46
01/07/2023	01/07/2023	PDEB	Periodic Debit	263.00		269.46
22/06/2023	20/06/2023	07	Bank Payment		260.00	6.46
01/06/2023	01/06/2023	PDEB	Periodic Debit	263.00		266.46
30/05/2023	26/05/2023	07	Bank Payment		260.00	3.46
01/05/2023	01/05/2023	PDEB	Periodic Debit	263.00		263.46
27/04/2023	25/04/2023	07	Bank Payment		260.00	0.46
01/04/2023	01/04/2023	PDEB	Periodic Debit	263.00		260.46

Landlord's Position

23. The landlord's representative testified that rent has not been up to date since April 2023, and they are seeking rent to be paid in full including rent for the month of May 2024.

Analysis

24. 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.

25. The rental ledger is amended to show a daily rate for May as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent from 1-April-2023 to 8-May-2024 in the amount of \$625.42.

Amended rental Ledger 2024-0303-NL			
Date	Action	Amount	Total
December 31, 2023		Balance	\$284.46
January 1, 2024	Rent due	\$263.00	\$547.46
January 17, 2024		Payment	-\$260.00
February 1, 2024	Rent due	\$263.00	\$550.46
March 1, 2024	Rent due	\$263.00	\$813.46
March 27, 2024	Payment	-\$520.00	\$293.46
April 1, 2024	Rent due	\$263.00	\$556.46
May 1-8, 2024	Rent due	\$68.96	\$625.42

Daily rate: \$263 x 12 mths = \$3156
\$3156 / 366 days = \$8.62 per day

26. The tenant shall pay a daily rate of \$8.62 until such time as the landlord regains possession of the property.

Decision

27. The landlord's claim for rent succeeds in the amount of \$625.42.

Summary of Decision:

28. The tenant shall pay the landlord \$625.42 in outstanding rent.

29. The tenant shall pay a daily rate of rent beginning 9-May-2024 of \$8.62 per day, until such time as the landlord regains possession of the property.

30. The tenant shall vacate the property immediately.

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

32. 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.

May 14, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office