

Residential Tenancies Tribunal

Application 2024-0333-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:59 p.m. on 17-July-2024.
2. The applicant, [REDACTED], represented by [REDACTED] and [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. I attempted to reach the tenant, however the phone number was not in service. 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 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 he/she has been properly served. The landlord’s representatives submitted an affidavit with their application stating that they had served the tenant via prepaid registered mail, tracking number [REDACTED] on 10-May-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 her absence.
5. There is a written month-to-month rental agreement which commenced on 5-May-2014. Rent is \$263.00 per month due on the first of each month. A security deposit was not collected.
6. The landlord amended the application to increase the total amount tenant owes from \$3880.00 as per application to \$4669.00 and to include hearing expenses in the amount of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:

- An Order for Vacant Possession of the rented premises;
- Rent paid \$4669.00;
- Hearing expenses \$20.00;

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 is the following sections of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent. Also, relevant and considered in this decision is Section 12-1 of the *Residential Tenancies Policy Manual*: Recovery of Costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted a copy of the termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated 26-March-2024 and was served via prepaid registered mail on that day, tracking number [REDACTED], with a termination date of 30-April-2024 (LL#2).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears since May-2020, and that the tenant doesn't make payments up to date. The landlord's representative stated that the total amount the tenant owed when the termination notice was issued was \$3617.00. The landlord's representative stated that there were no payments made by the tenant after the landlord issued the termination notice.

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, 30-April-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 30-April-2024.

Decision

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

Issue # 2: Rent Paid \$4669.00

Landlord's Position

16. The landlord's representative stated that the rent is outstanding in the amount of \$4669.00 including month of July. The landlord submitted a rental ledger to support their claim (LL#3). The landlord is seeking rent to be paid in full.

Analysis

17. 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. Payment for the month of July is amended to show a daily rate for that month as this tribunal does not consider future rent (see below). I find that the tenant is responsible for outstanding rent for the period of 2020 to July 17, 2024, in the amount of \$4552.54. See amended ledger below:

| Amended Rental Ledger 2024-0333-NL | | | |
|------------------------------------|----------|----------|------------|
| Date | Action | Amount | Total |
| January 1, 2024 | Balance | | \$3,091.00 |
| February 1, 2024 | rent due | \$263.00 | \$3,354.00 |
| March 1, 2024 | rent due | \$263.00 | \$3,617.00 |
| April 1, 2024 | rent due | \$263.00 | \$3,880.00 |
| May 1, 2024 | rent due | \$263.00 | \$4,143.00 |
| June 1, 2024 | rent due | \$263.00 | \$4,406.00 |
| July 1-17, 2024 | rent due | \$146.54 | \$4,552.54 |

Daily rate: $\$263 \times 12 \text{ mths} = \3156.00
 $\$3156.00 / 366 \text{ days} = \8.62 per day

18. The tenant shall pay a daily rate of \$8.62 per day as calculate above, until such time as the landlord regains possession of the unit.

Decision

19. The landlord's claim for rent succeeds in the amount of \$4552.54.

Issue # 3: Hearing expenses \$20.00.

Analysis

20. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and is seeking reimbursement. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

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

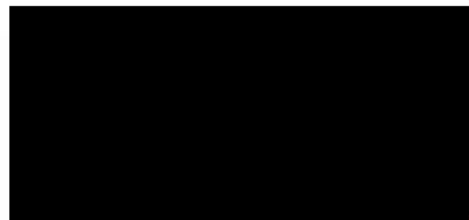
Summary of Decision

22. The tenant shall pay the landlord \$4572.54 as follows:

| | |
|------------------------|-----------|
| Rent paid | \$4552.54 |
| Hearing expenses | 20.00 |
| Total | \$4572.54 |

23. The tenant shall vacate the property immediately.
24. The tenant shall pay a daily rate of rent beginning 18 July-2024 of \$8.62, until such time as the landlord regains possession of the property.
25. 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.
26. The landlord will be awarded an Order of Possession.

July 23, 2024
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office