

Residential Tenancies Tribunal

Application 2024-0408-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 18-June-2024.
2. The applicant, [REDACTED], represented by [REDACTED] [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents fail 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 their application stating that they had served the tenants with the notice of hearing via prepaid registered mail to the residential address [REDACTED] on 24-May-2024 (LL#1). Canada Post indicates that the mail was not retrieved. In accordance with the *Residential Tenancies Act, 2018* mail is considered served 5 days after it is sent and as such, this is good service. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. There is a written month-to-month rental agreement which commenced on 1-January-2010. Rent is \$1158.00 per month due on the first of each month. A security deposit was never paid.
6. The landlord amended the application to increase rent paid from \$15,177.48 as per the application to \$16,335.48 to include rent for the month of June and a payment made in April. The landlord is also seeking hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$16335.48
 - 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 section of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: Section 12-1: Recovery of Costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions:

10. The landlord submitted a termination notice on a *Landlord's Notice to Terminate Early – Cause* form under Section 19: Notice where failure to pay rent. The notice is signed and dated for 8-March-2024, with a termination date of 30-April-2024 (LL#2). The landlord testified that the termination notice was sent on 8-March via prepaid registered mail (██████████).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears going back to 2019, and although payments have been made the tenants continued to carry a negative balance resulting in an outstanding amount of \$16,335.48.

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. Rent is required to be paid by a tenant(s) for the use or occupancy of a residential premises. The tenants were in rent arrears in excess of the 5 days when the termination notice was served. On the date of termination, 30-April-2024 the tenants were 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 tenants 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 \$16,335.48

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$16,335.48 dating back to 2019. The landlord submitted a copy of the rental ledger to support the claim (LL#3). See partial breakdown of ledger below:

Rental Ledger 2024-0408-NL			
Date	Action	Amount	Total
December 31, 2023	Balance	\$9,637.48	
January 1, 2024	Rent due	\$1,158.00	\$10,795.48
February 1, 2024	Rent due	\$1,158.00	\$11,953.48
March 1, 2024	Rent due	\$1,158.00	\$13,111.48
April 1, 2024	Rent due	\$1,158.00	\$14,269.48
April 9, 2024	Payment	-\$250.00	\$14,019.48
May 1, 2024	Rent due	\$1,158.00	\$15,177.48
June 1, 2024	Rent due	\$1,158.00	\$16,335.48

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$16,335.48 dating back to 2019. 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(s) during the use or occupancy of a residential premises. The landlord's representative testified that rent is outstanding in the amount of \$16,335.48 and the tenants were not present to dispute the claim.

19. The rental ledger is amended to show a daily rate for June as this tribunal does not consider future rent (see below). I find that the tenants are responsible for outstanding rent in the amount of \$15,860.94.

Amended Ledger 2024-0408-NL			
Date	Action	Amount	Total
December 31, 2023		Balance	\$9,637.48
January 1, 2024	Rent due	\$1,158.00	\$10,795.48
February 1, 2024	Rent due	\$1,158.00	\$11,953.48
March 1, 2024	Rent due	\$1,158.00	\$13,111.48
April 1, 2024	Rent due	\$1,158.00	\$14,269.48
April 9, 2024		Payment	-\$250.00
May 1, 2024	Rent due	\$1,158.00	\$15,177.48
June 1-18, 2024	Rent due	\$683.46	\$15,860.94

Daily rate: \$1158 x 12 mths = \$13896
\$13896 / 366 days = \$37.97 per day

20. The tenants shall pay a daily rate of \$37.97 until such time as the landlord regains possession of the property.

Decision

21. The landlord's claim for rent paid succeeds in the amount of \$15,860.94.

Issue # 3: Hearing expenses \$20.00

22. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#4).

23. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual: Recovery of Fees*, claimable costs may include the filing fee and any costs incurred in serving the other party with the application or with the evidence such as registered mail. As the landlord's claim has been successful, the tenants shall pay the hearing expenses.

Decision

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

Summary of Decision

25. The tenants shall pay the landlord \$15,880.94 as follows:

Rent paid.....	\$15860.94
Hearing expenses.....	20.00

Total..... **\$15880.94**

26. The tenants shall pay a daily rate of rent beginning 19-June-2024 of \$37.97, until such time as the landlord regains possession of the property.

27. The tenants shall vacate the property immediately.

28. The tenants 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.

June 27, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office