

Residential Tenancies Tribunal

Application 2024-0513-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was held on 10 July 2024 at 2:00 PM via teleconference.
2. The applicant, the [REDACTED], represented by [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 and was not represented.

Preliminary Matters

4. Prior to the start of the hearing at 1:47 PM, I attempted to reach the tenant by telephone at contact # [REDACTED]. This number was no longer 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 has been properly served. The landlord submitted an affidavit with her application stating the tenant had been served by Express Post [REDACTED] on 16 June 2024 (**Exhibit L # 2**). In accordance with the *Residential Tenancies Act*, 2018, this is good service. As the tenant was properly served, and as further delay in the proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. The details of the claim were presented as a written monthly agreement (**Exhibit L # 1**) with rent set at \$602.00 due on the 1st of each month. There was no security deposit collected on the tenancy and the tenant had been an occupant at [REDACTED] since 1 February 2019.
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.

7. The landlord amended her application at the hearing and is seeking to include rental arrears for the month of July and hearing expenses.

Issues before the Tribunal

8. The landlord is seeking the following:
- Rental Arrears in the amount of \$6,762.02
 - An Order for vacant possession of the rented premises
 - Hearing Fee in the amount of \$20.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act*, 2018.
10. Also relevant and considered in this case are Sections 19, 34, and 35 of the *Act*. Also, Policy 12-001 of the *Residential Tenancies Program Policy Manual: Recovery of Costs*.

Issue 1: Rental Arrears- \$6,762.02

Landlord Position

11. The landlord offered evidence that the tenant was issued a Landlord Notice to Terminate Early- Cause by Registered Mail ([REDACTED]) on 5 May 2024 with a request to vacate the rental by 31 May 2024 (**Exhibit L # 3**).
12. The landlord testified the tenant's payment of rent has been inconsistent and had been in rental arrears since 1 January 2023 in the amount of \$177.02 and, since this time, has continued to incur arrears. Along with her application, the landlord also provided a Rent Ledger of the tenant (**Exhibit L # 4**). This evidence indicates the following information:

Date	Transaction	Amount Due	Paid	Balance
1 Feb 2024	Rent Due	\$602.00	\$0.00	\$3,752.02
1 March 2024	Rent Due	\$602.00	\$0.00	\$4,354.02
1 April 2024	Rent Due	\$602.00	\$0.00	\$4,956.02
1 May 2024	Rent Due	\$602.00	\$0.00	\$5,558.02
1 June 2024	Rent Due	\$602.00	\$0.00	\$6,160.02

Analysis

13. Non-payment of rent is a violation of the rental agreement. The landlord amended her application as indicated herein and was seeking rental arrears to up to 31 July 2024 equaling **\$6,762.02**. This tribunal cannot consider future rent but can award rent up to the date of the hearing and then on a daily rental amount.

14. The landlord submitted a Notice under Section 19 in May 2024 with a request for the tenant to vacate by 31 May 2024. Since that time, the tenant failed to pay rent for June and July 2024. Rent owing up until 30 June 2024 is **\$6,160.02**.
15. Rent for July 2024 can only be calculated up to and including the day of the hearing (10 July 2024). That calculation is ($\$602.00 \times 12 \text{ months} = \$7,224.00 \div 366 \text{ days} = \19.74 per day $\times 10 \text{ days} = \197.40). Rent for July 2024 is **\$197.40**.
16. The tenant owes rental arrears of **\$6,357.42**.

Decision

17. The landlord's claim for rental arrears succeeds in the amount of **\$6,357.42**.
18. Additionally, the tenant is responsible for daily rent in the amount of **\$19.74** beginning on 11 July 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

19. The landlord submitted termination Notice under Section 19, in relation to the tenant's failure to pay rent (**Exhibit L # 3**).

Analysis

20. 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.

21. The tenant had been in rental arrears in excess of 5 days when the notice was served on 5 May 2024 to be out of [REDACTED], by 31 May 2024. The tenant remains in the property following being issued the notice to vacate and has been charged additional rent.

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

Decision

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

Issue 3: Hearing Expense- \$20.00

24. The landlord offered evidence of the application fee (**Exhibit L # 4**) and was seeking compensation. While the tenant had been served documents via registered mail, the landlord did not supply, along with her application receipts of the costs associated with registered mail.

25. I find the landlord's claim for hearing expense fee succeeds in the amount of \$20.00.

Decision

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

Summary of Decision

27. The landlord is entitled to the following:

- A payment of **\$6,377.42**, as determined as follows:

a) Rent owing..... \$6,357.42

b) Hearing expenses..... \$20.00

c) Total..... **\$6,377.42**

- An Order for vacant possession of the rented premises,

- A payment of a daily rate of rent in the amount of **\$19.74**, beginning on 11 July 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.

23 July 2024

Date



Michael Reddy, Adjudicator
Residential Tenancies Office