

Residential Tenancies Tribunal

Application 2024-0558-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was called at 2:00 PM on 23 July 2024.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord”, attended the teleconference.
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 her 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 she had been properly served. The landlord submitted an affidavit with their application stating that they had served the tenant with notice of hearing by registered mail ([REDACTED]) on 8 July 2024 (Exhibit L # 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 monthly rental agreement which commenced on 30 January 2014 (**Exhibit L # 2**). Rent is currently \$605.00 per month, due on the first of each month. A security deposit was never paid.
6. The landlord amended the application to increase rent from \$6,951.99 to \$7,207.00 to include outstanding rent for the month of July 2024. The landlord is also seeking \$20.00 hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
- Rent paid \$7,207.00
 - An Order for vacant possession of the rented premises
 - Hearing expenses in the amount of \$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 are Sections 19, 34 and 35 of the *Residential Tenancies Act*, 2018.

Issue 1: Rent paid \$7,207.00

Landlord Position

10. The landlord's representative testified that rent is outstanding in the amount of \$7,207.00 and the rent has not been paid in full by the tenant since July 2023. Along with her application, the landlord provided a rental ledger (Exhibit L # 5) which is partially reproduced in the analysis below. In addition to the rental ledger provided, the landlord's representative testified that the tenant has only made partial payments of \$350.00 for the months of May, June and July of 2024.

Analysis

11. Non-payment of rent is a violation of the rental agreement. The landlord amended her application as indicated herein and is seeking rental arrears up to 31 July 2024 equaling **\$7,207.00**. This tribunal does not consider future rent. Rent owing up until 30 June 2024 is **\$6,951.99**.
12. Rent for July 2024 can only be calculated up to and including the day of the hearing (23 July 2024). That calculation is ($\$605.00 \times 12 \text{ months} = \$7,260.00 \div 366 \text{ days} = \$19.84 \text{ per day} \times 23 \text{ days} = \456.32). Rent for July 2024 is **\$456.32**. The amended ledger is as follows:

Date	Transaction	Debit	Payment	Balance
1 April 2024	Rent Due	\$605.00	\$0.00	\$6,441.99
1 May 2024	Rent Due	\$605.00	\$0.00	\$7,046.99
24 May 2024	Payment		\$350.00	\$6,696.99
1 June 2024	Rent Due	\$605.00	\$0.00	\$7,301.99
6 June 2024	Payment		\$350.00	\$6,951.99
1–23 July 2024	Rent Due	\$456.32	\$0.00	\$7,408.31
6 July 2024	Payment		\$350.00	\$7,058.31

13. The tenant owes rental arrears of **\$7,058.31**.

Decision

14. The landlord's claim for rental arrears succeeds in the amount of **\$7,058.31**.
15. Additionally, the tenant is responsible for a daily rent in the amount of **\$19.84** beginning on 24 July 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of the Rental Premises

Landlord Position

16. The landlord submitted a copy of the termination notice that was given on a *Landlord's Notice to Terminate Early- Cause* form (Exhibit L # 3) under Section 19: failure to pay rent. This notice was issued by registered mail on 15 January 2024 with a request for the tenant to vacate the rental premises by 29 February 2024.

Analysis

17. 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.

18. Rent is required to be paid by a tenant(s) for the use or occupancy of a residential premises. The tenant had been in rental arrears in excess of 5 days when the notice was served on 15 January 2024 to be out of the rental premises by 29 February 2024. On the date of termination, 29 February 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.
19. I find that the tenants should have vacated the property by 29 February 2024.

Decision

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

Issue 3: Hearing Expense- \$20.00

21. The landlord offered evidence of the application fee (Exhibit L # 5) 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.
22. I find the landlord's claim for hearing expense fee succeeds in the amount of \$20.00.

Decision

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

Summary of Decision

24. The landlord is entitled to the following:
- A payment of **\$7,058.31**, as determined as follows:
 - a) Rent Owing.....\$7,058.31
 - b) Hearing expenses.....\$20.00
 - c) Total.....**\$7,078.31**
 - An Order for vacant possession of the rented premises

- A payment of a daily rate of rent in the amount of **\$19.84**, beginning on 24 July 2024 and continuing to the date the landlord obtains vacant possession on 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 Order of Possession.

July 26, 2024

Date



Michael Reddy, Adjudicator
Residential Tenancies Office