

Residential Tenancies Tribunal

Application 2024-0573-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held on 29-July-2024 at 1:45 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord attended by teleconference.
3. The first respondent, [REDACTED], hereinafter referred to as tenant 1, attended. The second respondent, [REDACTED], hereinafter referred to as tenant 2, did not attend.

Preliminary Matters

4. 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 they have been properly served. The landlord submitted an affidavit (LL#1) and supporting documents with his application stating that he had served both tenants with notice of the hearing electronically on 18-July-2024 at approximately 12:32 pm. Tenant 1 confirmed receipt. As both tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, the hearing proceeded in the absence of tenant 2.
5. There is a written 12-month fixed rental agreement (LL#2) which commenced in March 2024. Rent is \$2500.0 per month and due on the first of each month. A security deposit of \$1875.00 was paid on 20-March-2024 and remains in the landlord's possession.
6. The disposition of the security deposit will also be determined in this decision.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rental premises; and

- Rent paid \$2490.00

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* (the *Act*).
9. Also discussed and referred to in this decision are sections 14, 19, and 34 of the *Act*, and Residential Tenancies Policy 10-001.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submission:

10. The landlord submitted a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 30-May-2024, with a termination date of 10-June-2024 (LL#3).

Landlord's Position:

11. The landlord testified that rent was in arrears at the time the termination notice was issued on 30-May-2024 and was still in arrears on the termination date of 10-June-2024. He testified that he served the termination notice by email on 30-May-2024 and sent an additional copy by Canada Post. The landlord is seeking to have the tenant vacate the premises.

Tenant's Position:

12. The tenant testified that they had gotten behind on rent; she had been ill and in hospital. She testified that she had spoken to the landlord's wife and was of the understanding that the landlord was okay with paying the rent on the 20th. She further noted that they have been making payments, and that she did not receive the termination notice until "somewhere around the day he said they had to leave".

Analysis

13. 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.

14. The rental agreement signed by both the landlord and tenant, as entered into evidence specified that rent was due on the 1st of each month. Based on the evidence and testimony provided, the tenant was in arrears in excess of the 5-days when the notice was served. The notice was served in accordance with s.35. On the date of termination, 10-June-2024 the tenant was still in arrears. In accordance with Section 19 of the *Act* as stated above, the termination notice meets the requirements of the *Act* and is a valid notice.

15. I find that the tenants should have vacated the property by 10-June-2024.

Decision

16. The landlords claim for an order for an order for vacant position of the rental premises succeeds.

Issue 2: Rent Paid \$2490.00

Relevant Submission:

17. The landlord submitted a copy of the rental ledger (LL#4) to support his claim, as reproduced below:

Date	Transaction Description	Amount Due	Amount Paid	Balance
Examples showing ledger entry				
20/03/24	April Rent	\$ 2500.00	-\$ 2500.00	\$ 0.00
1/5/24	May Rent	\$ 2500.00	-\$ 600.00	\$ 2500.00
1/6/24	June Rent	\$ 2500.00	\$ 0.00	\$ 5000.00
7/6/24	Payment	\$ 0.00	-\$ 800.00	\$ 4200.00
8/6/24	Payment		-\$ 50.00	\$ 4150.00
8/6/24	Payment		-\$ 160.00	\$ 3990.00
8/6/24	Payment		-\$ 100.00	\$ 3890.00
20/6/24	Payment		-\$ 1000.00	\$ 2890.00
20/6/24	Payment		-\$ 400.00	\$ 2490.00

Landlord's Position:

18. The landlord testified that the tenants remain in rental arrears, but note that there have since been 5 separate partial payments of rent as follows:
- 21-June-2024: \$500.00
 - 24-June-2024: \$400.00
 - 19-July-2024: \$500.00
 - 19-July-2024: \$700.00
 - 23-July-2024: \$500.00

Tenant's Position:

19. The tenant testified that it was not her intent for this to take place, that she was very ill and in-and-out of the hospital, and that she had tried to contact the landlord on several occasions to find out how much was owing, but the landlord would not text her back.

Analysis

20. 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.
21. The rental ledger is amended to show a daily rate for July as this tribunal does not consider future rent beyond the date of hearing (see below).

Amended Rental Ledger 2024-0573				
Date	Action	Amount Due	Amount Paid	Total
1-April-2024	April Rent	\$2500	\$2500	\$0
1-May-2024	May Rent	\$2500	\$0	\$2500.00
1-June-2024	June Rent	\$2500	\$0	\$5000.00
7-June-2024	Payment		\$800	\$4200.00
8-June-2024	Payment		\$50	\$4150.00
8-June-2024	Payment		\$160	\$3990.00
8-June-2024	Payment		\$100	\$3890.00
20-June-2024	Payment		\$1000	\$2890.00
20-June-2024	Payment		\$400	\$2490.00
21-June-2024	Payment		\$500	\$1990.00
24-June-2024	Payment		\$400	\$1590.00
1 – 29 July-2024	July Rent	\$2377.13	\$0	\$3967.13
19-July-2024	Payment		\$500	\$3467.13
19-July-2024	Payment		\$700	\$2767.13
23-July-2024			\$500	\$2267.13

Daily rate: \$2500.00 * 12 months = \$30,000
\$30,000 / 366 days = \$81.97 per day

Decision

22. The landlord's claim for rent succeeds in the amount of \$2267.13.
23. The tenant shall pay a daily rate of \$81.97 after 29-July-2024 until such time as the landlord regains possession of the premises.

Issue 3: Security Deposit

24. The landlord is owed moneys and is therefore entitled to apply the security deposit against the sum owed. In this case, the initial security deposit was \$1875.
25. S. 14(7) of the *Act* says that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. The regulations prescribe a cumulative simple interest rate of 1% annual for the year of 2024. This results in interest of \$6.76, for a total of \$1881.76.


Decision

26. The landlord can apply the security deposit with interest against the sum owed.

Summary of Decision

27. The landlord is granted an order of vacant possession.
28. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
29. The tenant shall pay to the landlord \$385.37 as follows:
- | | |
|----------------------------|---------------|
| Unpaid Rent..... | \$ 2,267.13 |
| Less Security Deposit..... | - \$ 1,881.76 |
| Total..... | \$ 385.37 |
30. The tenant shall continue to pay rent at the daily rate of \$81.97/day for each day they remain in the premises past 29-July-2024.

21-August-2024
Date



Michael Reddy, Adjudicator
Residential Tenancies