

Residential Tenancies Tribunal

Application 2024-0648-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 5-September-2024.
2. The applicant, [REDACTED], represented by [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. 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 has been properly served. The landlord submitted an affidavit with their application stating that they had served the tenant with the notice of hearing via pre-paid registered mail ([REDACTED]) on 30-July-2024 (LL#1). Canada Post tracking indicates that the mail was not retrieved. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it is sent. 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 1-January-2022. Rent is \$263.00 per month due on the first of each month. A security deposit was never received.
6. The landlord amended the application to increase rent from \$2303.00 as per the application to \$2829.00 to include outstanding rent for August and September and to seek hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - An Order for Vacant Possession of the rented premises.
 - Rent paid \$2829.00
 - 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 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 under Section 19: Notice where failure to pay rent. The notice is signed and dated for 14-May-2024, with a termination date of 31-May-2024 (LL#2). The termination notice was served via registered mail ([REDACTED]).

Landlord's Position:

11. The landlord's representative testified that rent has been in arrears dating back to 1-November-2023, and no payments have been made since that time resulting in an outstanding amount of \$2829.00.

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, 31-May-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 on 31-May-2024.

Decision

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

Issue # 2: Rent paid \$2829.00

Relevant Submission

16. The landlord's representative testified that rent is outstanding in the amount of \$2829.00 dating back to 1-November-2023. The landlord submitted a copy of the rental ledger to support their claim (LL#3). See breakdown of ledger below:

Date	Transaction Description	Debit	Credit	Balance
	Opening balance			3936.00
01-NOV-23	Periodic Debit	263.00		4199.00
01-NOV-23	Bank Payment		650.00	3549.00
01-DEC-23	Periodic Debit	263.00		3812.00
01-DEC-23	Money Order / Bank Draft		3000.00	812.00
01-JAN-24	Periodic Debit	263.00		1075.00
23-JAN-24	Bank Payment		150.00	925.00
30-JAN-24	Bank Payment		200.00	725.00
01-FEB-24	Periodic Debit	263.00		988.00
01-MAR-24	Periodic Debit	263.00		1251.00
01-APR-24	Periodic Debit	263.00		1514.00
01-MAY-24	Periodic Debit	263.00		1777.00
01-JUN-24	Periodic Debit	263.00		2040.00
01-JUL-24	Periodic Debit	263.00		2303.00
01-AUG-24	Periodic Debit	263.00		2566.00

Landlord's Position

17. The landlord's representative testified that rent is outstanding in the amount of \$2829.00 dating back to November 2023. The landlord is seeking rent to be paid in full.

Analysis

18. 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

rented from **month to month**,

rented for a fixed term, or

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

19. 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 rental ledger is amended to show a daily rate for September as this tribunal does not consider future rent (see below).

Amended Rental Ledger 2024-0648-NL			
Date	Action	Amount	Total
May 1, 2024	Balance		\$1,777.00
June 1, 2024	Rent due	\$263.00	\$2,040.00
July 1, 2024	Rent due	\$263.00	\$2,303.00
August 1, 2024	Rent due	\$263.00	\$2,566.00
September 1-5, 2024	Rent due	\$43.10	\$2,609.10

Daily rate: $\$263 \times 12 \text{ mths} = \3156
 $\$3156 / 366 \text{ days} = \8.62 per day

20. I find that the tenant is responsible for outstanding rent up to the 5-September-2024 in the amount of \$2609.10.

21. The tenant shall pay a daily rate of \$8.62 until such time as the landlord regains possession of the property.

Decision

22. The landlord's claim for rent succeeds in the amount of \$2609.10.

Issue # 3: Hearing expenses \$20.00

23. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#4). Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. As the landlord's claim has been successful, the tenant 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 tenant shall pay the landlord \$2629.10 as follows:

Rent	\$2609.10
Hearing expenses.....	20.00
Total.....	<u>\$2629.10</u>

26. The tenant shall pay a daily rate of rent beginning 6-September-2024 of \$8.62, until such time as the landlord regains possession of the property.
27. The tenant shall vacate the property immediately.
28. 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.
29. The landlord will be awarded an Order of Possession.

September 6, 2024
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office