

Residential Tenancies Tribunal

Application 2024-0655-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held on 14 August 2024 at 9:15 AM.
2. The applicant, [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. 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 the tenant with notice of the hearing electronically via text message ([REDACTED]) on 31 July 2024 at approximately 8:15 AM. Prior to the start of the hearing, I attempted to contact the tenant by telephone without success. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, the hearing proceeded in the absence of tenant.
5. There is a verbal monthly agreement in place and the tenant was a tenant when the landlord purchased the property in May 2023 (LL #1). Rent is \$1,000.00 per month, heat and lights included, due on the first of each month. A security deposit of \$100.00 was paid to the previous landlord and remains in the current landlord's possession.
6. The landlord amended his application during the hearing and was seeking rental arrears for part of July 2024 and all of August 2024.
7. The disposition of the security deposit will also be determined in this decision.

Issues before the Tribunal

8. The landlord is seeking:

- An Order of Vacant Possession;
- Rent paid \$1,240.00; and,
- Hearing expenses \$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* (the *Act*).

10. 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

11. The landlord submitted a termination notice under Section 19: Notice where failure to pay rent. The notice is signed and dated for 10 July 2024, with a termination date of 21 July 2024 (LL # 2). The landlord testified this termination notice was issued via text message [REDACTED] at 1:43 PM on 10 July 2024.

12. The landlord testified that rent was in arrears at the time the termination notice was issued on 10 July 2024. The landlord is seeking to have the tenant vacate the premises.

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 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 5 days when the notice was served. The notice was served in accordance with Section 35. On the date of termination, 21 July 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 the tenant should have vacated the property by 21 July 2024.

Decision

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

Issue 2: Rent paid \$1,240.00

17. The landlord testified the tenant was not consistent in payment of rent by the 1st of each month and the tenant often paid bi-weekly amounts. Along with his application, he supplied rental payment information of the tenant since May 2024 (LL #3) and testified the tenant carried forward \$250.00 in rental arrears from April 2024. He stated the tenant last paid rent in the amount of \$510.00 on 5 July 2024 and since this time, there had been no payments made. The landlord stated the tenant owed \$240.00 for July 2024 and was seeking rent to include for August 2024.

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 during the use or occupancy of a residential premises.

19. The landlord had attempted to deal with the rental arrears owing by the tenant (LL # 4).

20. The landlord submitted evidence of the rental payments to support his claim, as reproduced below:

Date	Transaction	Rent Due	Paid	Balance
April 2024				\$250.00
1 May 2024	Rent due	\$1000.00	\$500.00	\$750.00
15 May 2024	Payment		\$500.00	\$250.00
29 May 2024	Payment		\$500.00	\$250.00 CR
1 June 2024	Rent due	\$1000.00	\$0.00	\$750.00
26 June 2024	Payment		\$500.00	\$250.00

1 July 2024	Rent due	\$1000.00	\$0.00	\$1250.00
5 July 2024	Payment		\$510.00	\$740.00

21. The landlord is seeking rental arrears to include August 2024. This tribunal does not consider future rent beyond the date of the hearing (14 August 2024). Rent owing for the month of August can only be calculated as follows: \$1000.00 X 12 Months = \$12,000.00. \$12,000.00/ 366 days = \$ 32.79 per day. \$32.79 X 14 = \$459.06.
22. The landlord's claim for rent succeeds in the amount of **\$1199.06**.
23. The tenant shall pay a daily rate of **\$32.79** after 14 August 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 \$100.00.
25. Section 14(7) of the Residential Tenancies 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 \$0.62, for a total of \$100.62.

Decision

26. The security deposit and interest of \$100.62 will be applied against monies owed.

Issue 4: Hearing expense \$20.00

27. The landlord submitted a copy of the hearing receipt (LL # 5). Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and is seeking reimbursement. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

28. The landlord's claim for hearing expenses succeeds.

Summary of Decision

29. The landlord is granted an order of vacant possession.
30. 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.
31. The tenant shall pay to the landlord **\$1118.44** as follows:
 - Unpaid rent..... \$1199.06
 - **Less Security plus interest..... \$ 100.62**
 - Hearing expense..... \$ 20.00
 - Total..... **\$1118.44**
32. The tenant shall continue to pay rent at the daily rate of \$32.79/day of each day she remains in the premises past 14 August 2024.

22 August 2024

Date

Michael Reddy, Adjudicator
Residential Tenancies Office