

Residential Tenancies Tribunal

Application 2024-0170-NL

Adjudicator Name

Michael Reddy

Introduction

1. The hearing was called on 1 May 2024 at 2:00 PM.
2. The applicant, [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. 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 tenant was served an Application for Dispute Resolution on 4 April 2024 via registered mail ([REDACTED]) and electronically at [REDACTED] (Exhibit L # 3). Furthermore, the tenant was served a Notice of Rescheduled Hearing on 27 March 2024 (Exhibit L # 4). As the tenant was properly served, and as further delay in the proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
5. The details of the claim were presented as a written monthly rental agreement (Exhibit L #1) with rent set at \$642.00 per month, with the tenant paying own utilities. There was no security deposit collected on this tenancy and the tenant took occupancy on 2 October 2002. The tenant remains in the rental property at [REDACTED] as of the date of the hearing (1 May 2024).
6. The landlord amended her application at the hearing to also include rental arrears owing for the month April 2024.

Issues before the Tribunal

7. The landlord is seeking the following:

- An order for payment of rent in the amount of \$3,119.00; and
- An order for vacant possession of the rental property.

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 case is S. 19, 34, and 35 the *Residential Tenancies Act*, 2018.

Issue 1: Rental Arrears = \$3,119.00

10. The landlord provided a piece of evidence dated 13 October 2022, signed by the landlord, indicating that the tenant's monthly rent would be increasing to \$642.00 beginning on 1 February 2023 (Exhibit L # 5).
11. The landlord testified in the hearing when the rental increase occurred in February 2023 from \$247.00 to \$642.00, the tenant had rental arrears in the amount of \$931.00 in February 2023 and continued to incur rental arrears.
12. Along with her application, the landlord supplied a breakdown of rental arrears for the tenant (**Exhibit L # 6**). This piece of evidence indicates the following:

Date	Rent Due	Payment	Balance
Pre-Feb 23			\$ 931.00
1-Feb-23	642.00	600.00	\$ 331.00
1-Mar-23	642.00	0.00	\$ 973.00
1-Apr-23	642.00	600.00	\$1015.00
1-May-23	642.00	400.00	\$1257.00
1-Jun-23	642.00	0.00	\$1899.00
1-Jul-23	642.00	400.00	\$2141.00
1-Aug-23	642.00	500.00	\$2283.00
1-Sep-23	642.00	800.00	\$2125.00
1-Oct-23	642.00	500.00	\$2267.00
1-Nov-23	642.00	500.00	\$2409.00
1-Dec-23	642.00	\$500.00	\$2551.00
1-Jan-24	642.00	\$500.00	\$2693.00
1-Feb-24	642.00	\$500.00	\$2835.00
1-Mar-24	642.00	\$500.00	\$2977.00
1-Apr-24	642.00	\$500.00	\$3119.00

13. The landlord stated as on the date of the hearing (1 May 2024), the tenant had not paid rent for May 2024, and is seeking rent to be paid in full.

Analysis

14. 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.

15. Evidence demonstrates rental arrears owing by the tenant equals \$3,119.00, up to and including 30 April 2024.

16. Rent for May 2024 can only be calculated up to and including the day of the hearing (1 May 2024). That calculation is ($\$642.00 \times 12 \text{ months} = \$7,704.00 \div 366 \text{ days} = \$21.05 \text{ per day} \times 1 \text{ day} = \21.05). Rent for 1 May 2024 is \$21.05.

17. I accept the testimony of the landlord that the tenant has not paid rent as required. The current balance of rental arrears owing on the date of the hearing is \$3,140.05.

Decision

18. The landlord's claim for rental arrears succeeds in the amount of **\$3,140.05**.

19. Additionally, the tenant is responsible for daily rent in the amount of **\$21.05** beginning on 2 May 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

20. The tenant was issued a Landlord's Notice to Terminate Early- Cause on 19 February 2024 under Section 19 of the *Residential Tenancies Act*, 2018, with a request to vacate the rental by 1 March 2024 (Exhibit L # 2).

Analysis

21. Section 19 of the *Residential Tenancies Act*, 2018 states:

1. **Notice where failure to pay rent**

2. **19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**

a. **(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**

3. **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.

a. (4) *In addition to the requirements under section 34, a notice under this section shall*

- (i) be signed by the landlord;*
- (ii) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (iii) be served in accordance with section 35.*

22. The tenant had been in rental arrears in excess of 5 days when the notice was served in February 2024 to be out of [REDACTED], by 1 March 2024. 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. The tenant should have vacated the property by 1 March 2024.

Decision

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

Summary of Decision

24. The landlord is entitled to the following:

- A payment for rental arrears, to 1 May 2024, in the amount of **\$3,140.05**;
- Payment of a daily rate of rent in the amount of **\$21.05**, beginning 2 May 2024 and continuing to the date the landlord obtains vacant possession of the rental unit;
- An order for vacant possession of the rented premises;
- 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.

May 22 2024

Date

[REDACTED]
Michael Reddy
Residential Tenancies Office