

Residential Tenancies Tribunal

Application [REDACTED]

Decision 23-0256-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 19-April.2023.
2. The applicant, Krown Property Investments Inc., 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 him by telephone [REDACTED] 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 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 he has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant served at his address with notice of the hearing, by a process server on 03-April-2023. 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 his absence.
5. The landlord amended their application to increase rent from \$1,100.00 to \$1,850.00 to reflect the current amount of rent due. As this file is for termination of the tenancy the security deposit will be applied to monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,850.00
 - Security deposit applied against monies owed \$300.00
 - Vacant possession of rental premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$1,850.00

Relevant Submissions

9. The landlord submitted a transfer of representation (LL#02) containing the details of the rental agreement. The landlord explained that this tenant has lived at the rental for more than 10 years. 15-November-2022 the homeowner purchased the property and hired the landlord to manage the rental units. The tenant is currently in a verbal monthly rental agreement. The tenant had been paying \$575.00 a month and this amount increased to \$750.00 per month on 01-February-2023. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$300.00 when he first took possession of the property. When the homeowner purchased the property the deposit came into his possession, he is still holding this deposit in trust.
10. The landlord submitted a rent ledger:

Rent ledger

| Date | Action | Amount | total |
|-----------|-----------------------------|----------|---------|
| | Opening Balance | 0.00 | 0.00 |
| 1-Dec-22 | Rent due | 575.00 | 575.00 |
| 1-Jan-23 | Rent due | 575.00 | 1150.00 |
| 15-Jan-23 | payment | -1150.00 | 0.00 |
| 1-Feb-23 | Rent due scheduled increase | 750.00 | 750.00 |
| 1-Mar-23 | Rent due | 750.00 | 1500.00 |
| 1-Mar-23 | payment | -400.00 | 1100.00 |
| 1-Apr-23 | daily rate rent | 468.54 | 1568.54 |

Daily rate: \$750.00 x 12 months = \$9,000.00
\$9,000.00 divided by 365 days = \$24.66 a day
\$24.66 a day x 19 days = \$468.54

11. Note: ledger is amended to show a daily rate for April as this tribunal doesn't consider future rent.
12. The landlord explained that the tenant fell behind in his rent payments in December and January, he paid this debt in full on 15-January-2023. In February the tenant fell behind again and has not been able to pay this debt in full since that time. The last partial

payment received was \$400.00 on 01-March-2023. The landlord is seeking full compensation for rent owed.

Analysis

13. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$1,568.54.
14. The tenant shall pay the landlord the rent owed totaling \$1,568.54.

Decision

15. The landlord's claim for rent succeeds in the amount of \$1,568.54.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

16. The landlord submitted a termination notice (LL#04); it is in letter form. The letter is signed and dated for 20-March-2023, with a termination date of 31-March-2023. The letter cites the reason for termination is in accordance with Section 19 of the *Residential Tenancies Act, 2018*.
17. The landlord explained that they used a courier to serve the notice. The receipt dated for 20-March-2023 is included (LL#05). She said that the normal practice is for the courier to knock and place the notice on the door. The courier contacted the landlord after serving the notice and told her that the tenant came to the door and he was served in person.

Analysis

18. The notice was served under Section 19, of the *Residential Tenancies Act, 2018*, which 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.

.....

19. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice. The notice was served in accordance of the *Act*.
20. The tenant should have vacated the property by 31-March-2023.

Decision

21. The landlord's claim for an order for vacant possession succeeds.
22. The tenant shall vacate the premises immediately.
23. The tenant shall pay to the landlords 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.
24. The tenant shall pay a daily rate for rent beginning 20-April-2023 of \$24.66, as per paragraph 15, until such time as the landlords regain possession of the property.

Issue 3: Security deposit applied against monies owed \$300.00

Relevant Submissions

25. The landlord stated in paragraph 10 that the tenant paid a security deposit of \$300.00 when he first began his tenancy; they are still in possession of the deposit.

Analysis

26. The landlord's claim for losses has been successful, paragraphs 17 and 21, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit

Decision

27. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$300.00.

Summary of Decision


28. The tenant shall:

- Pay the landlord \$1,268.54 as follows:
 - Rent \$1,568.54
 - Security deposit applied(300.00)
 - Total \$1,268.54
- Pay a daily rate of rent beginning 20-April-2023 of \$24.66, until such time as the landlords regain possession of the property.
- Vacate the property immediately
- Pay to the landlords 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.

The landlord

- Will be awarded an Order of Possession.
- Shall retain the security deposit of \$300.00.

April 25, 2023
Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office