

Residential Tenancies Tribunal

Application 2022 No. 2NL

Decision 22-0002-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:01 PM on 10 March 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$3000.00,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the security deposit of \$750.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The landlord amended his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$3750.00.

Issue 1: Rent - \$3750.00

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 October 2021, and a copy of that executed lease was submitted with his application (CS #1). The agreed rent is set at \$1500.00 per month, and it is acknowledged in the lease that the tenant had paid a security deposit of \$750.00.
8. With his application, the landlord submitted a copy of his rent records (CS #2) showing the payments the tenant had made since she moved into the unit. According to these records, the tenant's rent for October and November 2021 had been paid, as required. Since then, he testified that he had only received 2 other payments—\$1500.00 on 20 January 2022, which covered the rent for December 2021, and \$750.00 on 01 March 2022, which covered half of the rent owing for January 2022.
9. The landlord is seeking an order for a payment of the remaining \$750.00 owing for January 2022, as well as \$1500.00 for each of February and March 2022.

The Tenant's Position

10. The tenant stated that on 08 December 2021, she had entered into a verbal agreement with the landlord whereby rent would be due on the 15th day of each month.
11. The tenant also claimed that there were several maintenance issues at the rental unit which the landlord had not addressed and she claimed that she had issued him a notice to carry out repairs. She also claimed that the landlord had been harassing her about the rent.
12. With respect to the rent payments, the tenant testified that she was not aware that she had made any payments other than those identified by the landlord.

Analysis

13. I accept the testimony of the landlord in this matter and I find that the tenant had only made those 4 payments, identified in paragraph 8, above.
14. No tangible evidence was submitted at the hearing concerning the tenant's claims about harassment and maintenance issues. But in any case, those issues make no difference in an assessment of the rent owing, and a tenant is not permitted to withhold her rent without the prior authorization of the Director of Residential Tenancies.

15. I also find that the tenant presented no substantiating evidence to corroborate her claim that the due date for the rent payments had changed from the 1st of the month to the 15th of the month. In any case, as the landlord is also seeking an order for vacant possession of the rented premises, that issue does not affect the calculation of the amount of rent that is owing, to the date of the hearing.
16. I calculate that amount to be \$2743.20 (\$750.00 owing for January 2022, \$1500.00 owing for February 2022 and \$493.20 owing for March 2022 (\$1500.00 per month x 12 months = \$18,000.00 per year ÷ 365 days = \$49.32 per day x 10 days = \$493.20)).

Decision

17. The landlord's claim for a payment of rent succeeds in the amount of \$2743.20.
18. The tenant shall pay a daily rate of rent in the amount of \$49.32, beginning 11 March 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

19. With his application, the landlord submitted a copy of a termination notice that he stated he had sent to the tenant, by e-mail, on 04 January 2022 (CS #3). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 16 January 2022.
20. The landlord stated that the tenant has not moved out, as required, and he is seeking an order for vacant possession of the rented premises.
21. The landlord acknowledged that the tenant had issued him a Tenant's Notice of Extension Request, as per section 19.(5) of the *Residential Tenancies Act, 2018*, but he denied that request, on 3 grounds. The landlord stated that the notice did not identify the tenant's employer and he pointed out the notice was not sworn in front of a notary or judge. He also claimed that the tenant was not unemployed and was indeed still working.

The Tenant's Position

22. The tenant acknowledged receiving the landlord's termination notice. She argued, though, that as it was agreed that the date on which the rent was due had been moved from the 1st to the 15th, she was not late with the rent and she only owed him \$750.00.

23. Regarding the Notice of Extension Request, the tenant argued that the landlord's grounds for rejecting that notice were not valid. With respect to the name of her employer, the tenant pointed out that she was self-employed, and she also claimed that she had been without work since November 2021. She also claimed that there was no requirement that these notices be sworn in front of a notary.

Analysis

24. 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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

...

(5) Notwithstanding subsection (1), where a tenant suffers a loss of income due to loss of employment or a reduction in work hours as a result of the Public Health Emergency declared in the province on March 18, 2020, the period in which the tenant is required to vacate a residential premises under subsection (1) is extended for a period of not less than 30 days after the notice is served on the tenant.

(6) A tenant referred to in subsection (5) shall provide to the landlord proof of loss of income in the form of

(a) written or electronic documentation from the tenant's employer confirming the loss of employment or reduction in work hours; or

(b) a statutory declaration of the tenant.

25. On 04 January 2022, when the termination notice was issued—and regardless of whether the rent was due on the 1st, as the landlord contends, or the 15th, as argued by the tenant—the tenant had been in rental arrears for a period of longer than 5 days. That notice had an effective termination date of 16 January 2022 and I find that no payments were made to the landlord prior to that date.
26. It is not disputed that on 17 January 2022 the tenant issued the landlord with a Tenant's Notice of Extension Request as well as a statutory declaration (CS #5) concerning her loss of income. And no compelling evidence was presented by the landlord to establish that the contents of the tenant's declaration were untrue and I agree with the tenant that there is no requirement that the statutory declaration be sworn in front of a notary or commissioner of oaths.
27. However, the termination notice issued to the tenant had an effective termination date of 16 January 2022, and as no rent payment was made prior to that date, and as no extension request was received prior to that date, I find that the termination notice is valid. Any rent payments received after 16 January 2022, and likewise, any extension requests received that date, do not alter that fact.
28. As the termination notice issued to the tenant is valid and as it was properly served, I find that the landlord's claim for an order for possession of the rented premises succeeds.

Decision

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

Issue 3: Security Deposit

31. The landlord stated that the tenant had paid a security deposit of \$750.00 on 16 September 2021 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

32. The landlord is entitled to the following:

- A payment of \$1993.20, determined as follows:
 - a) Rent Owing\$2743.20
 - b) LESS: Security Deposit..... (\$750.00)
 - c) Total\$1993.20
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$49.32, beginning 11 March 2022 and continuing to the date the landlord obtains possession of the rental unit,
- 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.

18 March 2022

Date

John R. Cook
Residential Tenancies Tribunal