

Residential Tenancies Tribunal

Application 2022 No. 0104 NL

Decision 22-0104-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was convened at 2:00PM on 12 April 2022 and continued at 2:25 PM on 14 April 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] (12 April 2022) and [REDACTED] (14 April 2022), hereinafter referred to as "the landlord".
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", participated on 12 April but did not participate on 14 April 2022 due to a work conflict.
4. The tenant was originally served a copy of the application and notice of the hearing originally scheduled for May 24, by registered mail on 9 March 2022 and an affidavit of service was provided by the landlord (L#1).
5. The notice of rescheduled hearing was issued from the Residential Tenancies office to applicant by email and to the respondent by registered mail: [REDACTED] on March 22, 2022 (L#2).
6. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In this proceeding the standard of proof is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The landlord is seeking the following:
- An order for a payment of rent in the amount of \$2,775.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the security deposit of \$425.00.

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 case is sections 14, 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. At the commencement of the hearing, on April 12, 2022, the issue of who is the tenant came into dispute. Before adjudicating on the issues presented in the application, the issue of who is the tenant in this rental agreement was addressed.
11. Before the respondent, [REDACTED], was sworn in on 12 April 2022, he provided the following information:
- i. That he is employed by the [REDACTED] and moves frequently due to work demands;
 - ii. That he left the rental premises in summer 2021 and is residing in Alberta;
 - iii. That he communicated via email to a [REDACTED], the termination of his tenancy at the end of his one year lease (1 November 2020 through to 31 October 2021) for the rental premises;
 - iv. That his brother, [REDACTED] is the current tenant of the rental premises and that I was authorized to contact his brother;
 - v. That he had informed his brother to vacate the rental premises when his brother reported that a termination notice had been received;
 - vi. That he acknowledged money was owing for the rental premises; and
 - vii. That he was attempting to secure a loan for the purposes of paying off these arrears.
12. I instructed the tenant to forward all aforementioned emails addressed to a [REDACTED] to the Residential Tenancies office for the purposes of ascertaining the tenant's claims that he terminated his tenancy at the rental premises. However no emails were received.

13. I further contacted [REDACTED] using the phone number provided by the respondent regarding his occupancy in the rental unit. [REDACTED] authorized his mother, [REDACTED], to speak on his behalf. Under oath, [REDACTED] stated that [REDACTED] is the current occupant of the rental premises and that [REDACTED] pays rent money to his brother [REDACTED] who in turn pays the rent to [REDACTED], the landlord.
14. I find [REDACTED] is properly named as the tenant and respondent in this application. I accept the statements from the respondent, [REDACTED] that he attempted to terminate his tenancy of the rental premises and be replaced by his brother as the tenant. However, he did not submit evidence to support his claim that his tenancy had been terminated and re-assigned to his brother with the consent of the landlord.
15. Further weighing against [REDACTED] claim that he is not the tenant in this application are the statements from [REDACTED] that [REDACTED] pays rent to his brother [REDACTED] who then pays the rent to the [REDACTED], the landlord. While I find that [REDACTED] is a sub-landlord to tenant [REDACTED], this does not absolve [REDACTED] of his responsibilities as a tenant in his rental agreement with [REDACTED] which remains in effect.
16. When the hearing was reconvened on 14 April 2022, I contacted [REDACTED] to participate in the conference call. He advised that he would not be able to participate due to work commitments. I advised him that the hearing would continue in his absence. He acknowledged that notice of proceedings had been provided to him and that monies are owing to the landlord.
17. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$3,775.00.

Issue 1: Rent - \$3,775.00

Relevant Submissions

Landlord's Position

18. The landlord acknowledged that a [REDACTED] worked for their company until June 2021. The landlord provided an email, dated 4 April 2022, received through this account, wherein the tenant alleges that he provided notice of termination in May 2021. The tenant also writes in this email that he is "aware that I owe money" (L#3).
19. The landlord testified that she entered into a fixed term yearly rental agreement with the tenant that commenced November 1, 2020. The agreed rent was set at \$850.00 per month for the initial rental term. A copy of the written lease was provided (L#4).

20. The agreement then converted to a month-to-month tenancy and rent has been set at \$925.00 as of November 1, 2021. The landlord indicated that the tenant would have been sent a lease renewal notice letter in or around May 2021. The landlord testified, that because this letter was not returned to the landlord, the tenancy automatically converted to a month-to-month lease effective November 1, 2021.
21. The landlord submitted a copy of her rent records showing rent payments received from the tenant since he had moved into the unit (L#5). According to these records, the tenant last had a zero-balance at the end of November 2021.
22. The landlord was not previously aware that the tenant's brother was now occupying the rental unit.
23. According to the landlord's records, the tenant is now in arrears in the amount of \$3,775.00. The tenant made a payment of \$925.00 on 1 March 2022 but no payments were made for the months of December 2021, January 2022, February 2022 or April 2022.
24. The landlord is seeking an order for a payment of that amount.

Tenant's Position

25. The tenant acknowledged that money is owing to the landlord and spoke of how he was seeking a loan for the purposes of paying off arrears related to the rental premises.

Analysis

26. I accept the landlord's claim that the tenant has not paid rent as required.
27. I accept the landlord's testimony and evidence showing that over the five month period of December 21 – April 2022, only one monthly rent payment was received from the tenant.
28. Landlord records show that the tenant owes \$3,775.00 (inclusive of a \$75.00 late payment fee that has already been applied directly to the tenant's account as per the terms of the written lease) for the period ending 30 April 2022.
29. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
30. I calculate that the landlord is owed \$2,775 (up to 31 March 2022) + \$425.75 (for April 1 through 14, 2022 (the date of the hearing)) and is further entitled to a per diem of \$30.41. ($\$925.00 \text{ per month} \times 12 \text{ months} = \$11,100.00 \text{ per year} \div 365 \text{ days} = \30.41) for each day that the rental premises remains occupied.

31. The late fee of \$75.00 will be dealt with separately.

Decision

32. The landlord's claim for a payment of rent succeeds in the amount of \$3,200.75 (\$2,775 + \$425.75). Additionally, the tenant shall pay a daily rate of rent in the amount of \$30.41, beginning 15 April 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

Analysis

33. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

34. As the tenant has been arrears since December 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

35. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

Landlord's Position

36. With her application, the landlord submitted a copy of a termination notice (L#6) sent on 12 January 2022 with an effective date of 27 January 2022. The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*.
37. The landlord testified that the termination notice was served by posting it on the door of the rental premises on 14 January 2022.
38. The landlord stated that the rental premises is still occupied and she is seeking an order for vacant possession of the rented premises.

Tenant's Position

39. The tenant stated that he attempted to terminate his tenancy at the conclusion of his original 1 year rental term.
40. The tenant also stated that he instructed his brother to vacate the rental premises after his brother informed him of the termination notice placed on the door of the rental premises.
41. [REDACTED] did not have information or testimony on the termination notice.

Analysis

42. 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.

- 43. According to the landlord's records, on 14 January 2022, the day the termination notice was posted to the door of the rental premises, the tenant was in arrears (\$1,850.00), and had been in arrears since the beginning of December 2021.
- 44. The tenant does not dispute the validity of the termination notice.
- 45. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is a valid notice

Decision

- 46. The landlord's claim for an order for vacant possession of the rented premises succeeds.
- 47. 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 4: Security Deposit

Relevant Submissions

Landlord's Position

- 48. The landlord stated that the tenant paid a security deposit of \$425.00 on 05 October 2020.

Tenant's Position

- 49. The tenant provided no specific commentary on the security deposit.

Analysis

50. I accept that a security deposit was collected by the landlord from the tenant.

Decision

51. As the landlord's claim has been successful, she shall retain that deposit to be applied against monies owed by the tenant as outlined in this decision and attached order.

Summary of Decision


52. The landlord is entitled to the following:

- A payment of \$2,850.75, determined as follows:

a) Rent Owing	\$3,200.75
b) Late Fees	\$75.00
c) LESS: Security Deposit.....	(\$425.00)
d) Total	<u>\$2,850.75</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$30.41, beginning 15 April 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.

28 April 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal