

Residential Tenancies Tribunal

Application 2022 No. 0188 NL

Decision 22-0188-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16AM on 20 April 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".
3. The respondent, [REDACTED] as represented by [REDACTED], hereinafter referred to as "the tenant", did not participate.
4. 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 proceedings 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

5. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$2,600.00, and
 - An order for vacant possession of the rented premises.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

8. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
9. 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.
10. The landlord submitted an affidavit with his application stating that he had sent the application and notice of the hearing to the tenant, by email, on 5 April 2022. When asked how he came to know this is the tenant's email address, the landlord referred to his written rental agreement for the rental premise where the tenant's email is noted and spoke further of how Etransfers are received from this address.
11. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
12. The landlord amended her application at the hearing and stated that he was now seeking rent for the month of March (\$2,500.00) and April 2022 (\$2,500.00).

Issue 1: Rent - \$5,000.00

Relevant Submissions

13. The landlord testified that he had had entered into a fixed term yearly rental agreement with the tenant that commenced 1 June 2020. The agreed rent was set at \$2,500.00 per month for the initial rental term.
14. The landlord submitted a copy of the written lease with his application (T#1). The current tenancy is month, and rent remains \$2,500.00 due on the first day of each month.
15. With his application, the landlord submitted a copy of partial rent records showing rent payments allegedly outstanding for the rental premises (T#2). When asked to explain the ledger, the landlord testified that rent for the months of March and April 2022 is outstanding.
16. According to the landlord's records, the tenant is now in arrears in the amount of \$5,000.00. When asked to explain two \$5.00 records for late fees on the rent

ledger, the landlord testified that he had included those fees because he understood that he was able to charge these fees in accordance with the *Act*.

17. The landlord is seeking an order for a payment of that amount.

Analysis

18. I accept the landlord's claim that the tenant has not paid rent as required and that the tenant owes \$2,500.00 for the period ending 31 March 2022.
19. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing (20 April 2022) and a per diem thereafter.
20. I calculate the amount owing to be \$4,143.80 (\$2,500.00 owing for the period ending 31 March 2022 and \$1,643.80 for April 1 – 20, 2022 (\$2,500.00 per month x 12 months = \$30,000.00 per year ÷ 365 days = \$82.19 per day x 20 days)).
21. Because the landlord did not explicitly claim for "Late fees paid" under Part 5 of his application for Dispute Resolution, his testimony related to payment of late fees that occurred during the hearing was not considered in writing this report. As such, no late fees will be awarded.

Decision

22. The landlord's claim for a payment of rent succeeds in the amount of \$4,143.80
23. The tenant shall pay a daily rate of rent in the amount of \$82.19, beginning 21 April 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

24. With his application, the landlord submitted a copy of a termination notice (T#3) sent on 7 March 2022 with an effective date of 19 March 2022. The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*.
25. The landlord testified that the notice was provided by email to the tenant on 7 March 2022.

26. 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.

Analysis

27. 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.

28. According to the landlord's records, on 7 March 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$2,500.
29. 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

30. The landlord's claim for an order for vacant possession of the rented premises succeeds.
31. The tenants 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: Hearing Expenses

32. The landlord claimed \$20.00 for the expense of applying for the hearing (T#4).

33. As his claim has been successful, the tenant shall pay this hearing expense.


Summary of Decision

34. The landlord is entitled to the following:

- A payment of \$4,163.80, determined as follows:
 - a) Rent Owning..... \$4,143.80
 - b) Hearing Expenses.....\$20.00
 - c) Total.....\$4,163.80
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$82.19, beginning 21 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.

21 April 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal