

Residential Tenancies Tribunal

Applications: 2022 No. 0189 NL

Decision 22-0189-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16AM on 30 May 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served, by email, of the claim against him.
5. The details of the claim were presented as fixed term agreement, signed 1 June 2021, with rent set at \$850.00 per month. As security deposit was collected in the amount of \$637.50 and receipted on the copy of the written move-in agreement provided along with the affidavit of service as proof of the tenant’s email address used for service (L#1).
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. The standard of proof, in these proceedings, 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:
 - Payment of Rent in the amount of \$1,475.00;
 - Payment of Late Fees in the amount of \$75.00;
 - An order to use the security deposit of \$637.50 against monies owed; and
 - An order for vacant possession.

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* (the *Act*).
9. Also relevant and considered in this case is section 14, 15 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. 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*.
11. 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.
12. 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.
13. The landlord amended the amount of rent owing to \$1,725.00.

Issue 1: Payment of Rent (\$1,725.00)

14. The rental premises is an apartment building located at [REDACTED]. The tenant resides in unit [REDACTED].
15. The landlord provided a copy of the rental ledger dated 30 May 2022 showing a balance of \$1,725.00 (L#2). According to these records, the tenant last had a zero dollar balance in December 2021 and has not successfully paid full rent on the day that it is due since that time. The landlord testified that current balance of rental arrears is \$1,725.00, as at the day of the hearing.

Analysis:

16. I accept the landlord's claim and evidence that the tenant has rental arrears in the amount of \$1,725.00 as at the day of the hearing. Because the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to payment of rent to the date of the hearing and a per diem thereafter.
17. As indicated in the testimony provided by the landlord and shown in the table below, the tenant has made six rental payments since January 2022 but these payments have not covered the full amount of rent outstanding.
18. I find that consistent with testimony provided by the landlord, rental arrears stood at \$1725.00 at 30 April 2022 and that a late payment of rent in the full amount of \$850.00 was received from the tenant in May 2022.
19. I therefore calculate the total arrears owing as at 30 May 2022 to be \$1,713.50. This amount was arrived at through the following calculations:
 - $\$850.00 \times 12 = \$10,200 / 365 = \$27.95$ per day
 - $\$27.95 \times 30 = \838.50 for May 1 – 30, 2022
 - $\$838.50 + \$1,725.00 = \$2,563.50$ for total possible rental arrears
 - $\$2,563.50 - \850.00 May 2022 payment received = \$1,713.50

Decision

20. The landlords' claim for rent succeeds in the amount of \$1,713.50.

Issue 2: Payment of Late Fees (\$75.00)

Relevant Submission

21. The landlords' have assessed late fees in the amount of \$75.00.

Analysis

22. 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.*

23. 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.

24. As the tenant has been arrears since at least 2 January 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

25. The landlords' claim for late fees succeed in the amount of \$75.00.

Issue 3: Vacant Possession

Relevant Submissions

26. The landlord issued a termination notice to the tenant on 9 February 2022 under section 19 of the *Act* (L#3). This notice was hand delivered to the tenant on the day it was issued. The stated move out date was identified as 21 February 2022.
27. The landlord testified that the tenant was in arrears in the amount of \$875.00 on the day the termination notice was issued. He further testified that the tenant made a payment of \$250.00 on 17 February 2022, but that this payment was insufficient to cover the full amount of rental arrears.
28. The landlord is seeking an order for vacant possession of the rental premises because the tenant has not paid their rental arrears and has not vacated the rental premises as required.

Analysis

29. 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.

30. I accept the landlord's claim and evidence that the tenant has not paid their rent as required. According to his records, the tenant was in arrears in the amount of \$875.00 on the day the termination notice was issued.
31. 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

32. The landlord's claim for an order for vacant possession of the rented premises succeeds.
33. 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 \$637.50 Relevant Submissions

34. Evidence of a \$637.50 security deposit having been collected on 1 June 2021 is contained within the move-in form (L#1) and the rent ledger provided (L#2).

Analysis

35. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(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.

(12) A landlord who does not make an application in accordance with subsection

(11) shall return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

36. According to the landlords' records, a security deposit in the \$637.50 was collected on 1 June 2021.
37. The landlords are seeking to use the full amount of the security deposit against rent monies owing.
38. As the amount owing to the landlords for rent and late fees is in excess of the security deposit collected, I find that the landlord is entitled to use of the full amount of the security deposit.

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39. As the landlords' monetary claim has been successful, they shall retain the full security deposit to be used against money owing.

Issue 4: Hearing Expenses **Relevant submissions**

40. The landlord claimed \$20.00 for the expense of applying for the hearing (L#4).
41. As the landlords' claim has been successful, the tenant shall pay this hearing expense.

Summary Decision

42. The landlord is entitled to the following:

- An order for use of the full amount (\$637.50) of the security deposit collected;
- A payment of \$1,171.00, determined as follows:
 - a) Rent Owing..... \$1,713.50
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) Less - Security Deposit.....\$637.50
 - e) Total.....\$1,171.00
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$27.95, beginning 31 May 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.

31 May 2022
Date



Jaclyn Casler
Residential Tenancies Tribunal