

Residential Tenancies Tribunal

Application 2022 No. 219 NL

Decision 22-0219-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:17 AM on 13 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], 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 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

5. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1,520.00,
 - 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 \$332.00.

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 sections 15 and 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 her application stating that she had sent the application and notice of the hearing to the tenant, by pre-paid registered mail, on 25 March 2022. A review of the tracking number associated with the mail indicates that it has not yet been collected. However, it is considered served five days after it was sent in accordance with subsection 42(6) of the *Residential Tenancies Act*.
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 she was now seeking a total claim of rent in the amount of \$2,355.00.

Issue 1: Rent - \$2,355.00

Relevant Submissions

13. The landlord testified that she had had entered into a fixed term yearly rental agreement with the tenant that commenced 1 November 2017. The agreed rent was set at \$665.00 per month for the initial rental term. The agreement then converted to a month to month tenancy and has continued since that time.
14. The landlord submitted a copy of the written lease with her application (T#1). Current monthly rent is set at \$760.00 and is due on the first day of each month.
15. With her application, the landlord submitted a copy of her rent records showing rent payments she had received from the tenant since November 2020. (T#2). According to these records, the tenant last had a zero-balance at the end of January 2022.
16. According to the landlord's records, the tenant is now in arrears in the amount of \$2,280.00.

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 his rent as required.
19. Records show that the tenant owes \$2,355.00 (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.
20. 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 (13 April 2022) and a per diem thereafter.
21. I calculate the amount owing to be \$1,844.87 (\$1,520.00 owing for the period ending 31 March 2022 and \$324.87 for April 1-13 2022 (\$760.00 per month x 12 months = \$9,120.00 per year ÷ 365 days = \$24.99 x 13 days)).
22. The late fee of \$75.00 will be dealt with separately.

Decision

23. The landlord's claim for a payment of rent succeeds in the amount of \$1,844.87.
24. The tenant shall pay a daily rate of rent in the amount of \$24.99, beginning 14 April 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

Analysis

25. 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.

26. As the tenant has been arrears since February 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

28. With her application, the landlord submitted a copy of a termination notice (T#3) sent on 18 February 2022 with an effective date of 3 March 2022. The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*.
29. The landlord stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises

Analysis

30. 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.

31. According to the landlord's records, on 18 February 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$760.00, and had been in arrears since the beginning of February 2022.
32. 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

33. The landlord's claim for an order for vacant possession of the rented premises succeeds.
34. 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

35. The landlord submitted a hearing expense claim form and attached receipts for all monies claimed (T#4). She is seeking reimbursement in the amount of \$34.88 for hearing application fee and the costs of registered mail.
36. As her claim has been successful, the tenants shall pay this hearing expense.

Issue 4: Security Deposit

37. Receipt of a \$332.00 security deposit was noted in paragraph 5 of the written lease agreement (T#1). This deposit was said to have been collected on 06 October 2017.
38. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

39. The landlord is entitled to the following:

- A payment of \$1,622.75, determined as follows:
 - a) Rent Owing..... \$1,844.87
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$34.88
 - d) LESS: Security Deposit..... (\$332.00)
 - e) Total.....\$1,622.75
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$24.99, beginning 14 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.

18 April 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal