

## Residential Tenancies Tribunal

Application 2022 No. 0228 NL

Decision 22-0228-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 9:16 AM on 26 April 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "landlord1", participated in the hearing.
3. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "landlord2", participated in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.
5. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was properly served of the claim against her.
6. The details of the claim were presented as a written rental agreement with rent set at \$1,000.00 per month since 1 July 2020. The original term was one year, and it is currently month-to-month. A security deposit in the amount of \$500.00 was collected on 11 June 2020.
7. 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 these 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**

8. The landlord is seeking the following:
  - Vacant possession of the rental premises;
  - Payment of rent in the amount of \$2,400.00;
  - Late fees paid (\$75.00);
  - Use of security deposit in the amount of \$500 against monies owed.

## **Legislation and Policy**

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. 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**

11. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
12. 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.
13. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
14. Landlord1 amended his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$3,400.00.

## **Issue 1: Payment of Rent**

### **Relevant Submissions**

15. Landlord1 informed that the rental agreement for [REDACTED], was initially a fixed term rental agreement of 1 year (1 July 2020 through 30 June 2021).

16. The rental agreement has since converted to a month-to-month agreement.
17. Landlord2 provided a comprehensive rent ledger (L#02).
18. As per the rent ledger, the tenant was in arrears in the amount of \$2,400 at the end of March 2022 and last had a zero dollar balance in October 2021.

## **Analysis**

19. I accept the landlords' claim that the tenant has not paid her rent as required and that the tenant owes \$2,400.00 for the period ending 31 March 2022.
20. As the landlords are also seeking an order for vacant possession of the rented premises, I find that they are entitled to a payment of rent to the date of the hearing (26 April 2022) and a per diem thereafter.
21. I calculate the amount owing to be \$3,254.88 (\$2,400.00 owing for the period ending 31 March 2022 and \$854.88 for April 1 – 26, 2022 (\$1,000.00 per month x 12 months = \$12,000.00 per year ÷ 365 days = \$32.88 per day)).

## **Decision**

22. The landlords' claim for rent succeeds in the amount of \$3,254.88.

## **Issue 2: Late Fees - \$75.00**

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

## **Analysis**

24. 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.***

25. 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 at least 2 November 2021, the landlords' are entitled to a payment of the maximum fee of \$75.00 set by the minister.

## Decision

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

## Issue 3: Vacant Possession of Rented Premises

### Relevant Submissions

28. The landlords submitted a copy of a termination notice sent on 7 March 2022 with an effective date of 19 March 2022 with their application (L#3).

29. The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*.

30. Landlord1 stated that the termination notice was pasted to the tenant's door on the date it was signed. He further stated that the tenant has not moved out, as required.

31. The landlords' are seeking an order for vacant possession of the rented premises

### Analysis

32. 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.*

33. According to the landlords' records, on 7 March 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$2,400.00.
34. 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**

35. The landlords' claim for an order for vacant possession of the rented premises succeeds.
36. 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 \$500.00**

37. Evidence of a \$500.00 security deposit having been collected on 11 June 2020 is contained within the rent ledger that was provided (L#2).

## **Analysis**

38. 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.*

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

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

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(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.*

39. According to the landlords' records, a security deposit in the amount of \$500.00 was collected from the tenant on 11 June 2020.
40. The landlords are seeking to use the full amount of the security deposit against rent monies owing.
41. As the amount owing to the landlords for rent and late fees is in excess of the security deposit collected, I find that the landlords are entitled to use of the full amount of the security deposit.

### **Decision**

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

### **Issue 3: Hearing Expenses**

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

## **Summary of Decision**

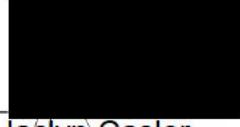
45. The landlords are entitled to the following:

- A payment of \$2,849.88, determined as follows:
  - a) Rent Owing..... \$3,254.88
  - b) Late Fees .....\$75.00
  - c) Hearing Expenses.....\$20.00
  - d) **Security Deposit.....\$500.00**
  - e) Total.....**\$2,849.88**
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$32.88, beginning 27 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.

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29 April 2022

Date

  
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Jaclyn Casler  
Residential Tenancies Tribunal