

Residential Tenancies Tribunal

Applications: 2022 No. 0232 NL

Decision 22-0232-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:17AM on 27 April 2022 via teleconference.
2. The applicant, [REDACTED], 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 properly served of the claim against him.
5. The details of the claim were presented as a month-to-month agreement with rent set at \$500.00 per month since 1 December 2020. A security deposit in the amount of \$250.00 was collected on 1 December 2020.
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 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

7. The landlord is seeking the following:
 - Vacant possession of the rental premises;
 - Payment of rent in the amount of \$645.00.

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 19 of the *Residential Tenancies Act, 2018* 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 his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$1,145.00.

Issue 1: Payment of Rent

Landlord's Position

9. The landlord informed that the rental agreement for [REDACTED] is for use of a bed sitting room, specifically room # 208. The agreement was originally a one year lease, signed 1 December 2020. It is currently a month-to-month agreement with \$500.00 for rent due on the first of each month.
10. The landlord provided a partial rent ledger (L#02) showing that \$145 is owing from the month February 2022, and that rent has not been paid for March 2022 or April 2022.

Analysis

14. I accept the landlord's claim that the tenant has not paid his rent as required and that the tenant owes \$645.00 for the month ending 31 March 2022.
15. 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 (27 April 2022) and a per diem thereafter.
16. I calculate the amount owing to be \$1,088.88 (\$645.00 owing for the month ending 31 March 2022 and \$443.88 for April 1 – 27, 2022 (\$500.00 per month x 12 months = \$6,000.00 per year ÷ 365 days = \$16.44 per day)).

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17. The landlord's claim for rent succeeds in the amount of \$1,088.88.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

18. With his application, the landlord submitted a copy of a termination notice (L#3) signed on 23 March 2022, with an effective date of 3 April 2022.
19. The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*. It was served personally by the landlord on the tenant, by knocking on his door and handing it to him on 23 March 2022.
20. 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

21. 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),

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(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.

22. According to the landlord's records, on 23 March 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$645.00 and had been in arrears since the end of December 2021.
23. 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

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24. The landlord's claim for an order for vacant possession of the rented premises succeeds.
25. 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

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

Summary of Decision

28. The landlord is entitled to the following:

- A payment of \$1,108.88, determined as follows:
 - a) Rent Owing..... \$1,088.88
 - b) Hearing Expenses.....\$20.00
 - c) Total.....\$1,108.88
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$16.44, beginning 28 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.

29 April 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal