

Residential Tenancies Tribunal

Applications: 2022 No. 0239 NL

Decision 22-0239-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:16AM on 10 May 2022 via teleconference.
2. The applicant, [REDACTED] as represented by [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 served of the claim against him.
5. The details of the claim were presented as an ongoing month-to-month agreement with rent set at \$850.00 per month. The tenant is said to have resided in the rental premises for many years prior to the premises coming under the management of the landlord in May 2021. No security deposit is said to have been collected.
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 \$898.00 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 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 her claim for rent owing from \$898.00 to \$2,267.00.

Issue 1: Payment of Rent (\$2,267.00)

Landlord's Position

14. The landlord provided a copy of the business agreement between themselves and the owner of the rental premises located at [REDACTED] (L#2). As per this agreement, the landlord is the duly authorized agent for the rental premises. The landlord also provided the rental agreement that exists between the property owner and the tenant (L#3).
15. Monthly rent is set at \$850.00 and is due on the first of each month.
16. The landlord provided a copy of the current rental ledger showing a balance of \$2,267.00 as of 9 May 2022 (L#4). I asked the landlord to review the ledger and clarified with her that the application she submitted to the tribunal was for payment of rent and not payment of late fees. As such, I informed her that the late fees charged on the ledger would not be included in my calculations of rent owing. With the late fees removed from the ledger, \$2,125 is found to be owing by the landlord through to the end of May 2022.

Analysis

17. I accept the landlord's claim and evidence that the tenant has not paid full rent for the months of March or April 2022, and that they last had a negative balance on their account on 17 February 2022. Because the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to payment of rent to the date of the hearing and a per diem thereafter.
18. As shown on the rental ledger provided by the landlord, single payment was collected from the tenant in the amount of \$425.00 on 1 April 2022. I therefore calculate **\$1,275.00** to be owing by the tenant, as at 30 April 2022 (\$850.00 for March and April = \$1,700.00 - 425.00 = \$1,275.00).
19. I further calculate **\$279.50** to be owing by the tenant for rent from 1 May 2022 until 10 May 2022 the day of the hearing. In addition to the above, a per diem of **\$27.95** is owed to the landlord for each day the tenant remains in the rental premises following today.

Decision

1. The landlords' claim for rent succeeds in the amount of **\$1,554.50** (\$1,275.00 March/April + \$279.50 May = \$1,554.50)

Issue 2: Vacant Possession

Relevant Submissions

2. The landlord testified that she has spent a significant amount of time, since becoming landlord to this tenant, speaking with him on the phone and via email to extend "olive branches" and to work with him to rectify the situation of non-payment of rent. After doing so, the landlord stated that "things only get done" when Termination notices are issued and reviewed with me the three termination notices that had been issued to the tenant.
20. In particular, we reviewed the termination notice sent on 8 March 2022 with an effective date of 19 March 2022 (L#5). The notice was issued under Section 19 of the *Act* and was provided via email, using the address provided by the tenant and used frequently for correspondence between the landlord and tenant.
21. The landlord stated that the tenant has not moved out, as required.
22. The landlord is seeking an order for vacant possession of the rented premises

Analysis

23. 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.

24. According to the landlords' records, on 8 March 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$850.00.
25. 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

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. 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 3: Hearing Expenses

3. The landlord claimed **\$20.00** for the expense of applying for the hearing (L#6).
4. The landlord also claimed the costs of providing notice to the tenant of the dispute via registered mail. This receipt for **\$14.88** is provided on the back end of her affidavit of service that was provided (L#1).

5. As her claim has been successful, the tenant shall pay the hearing expense of **\$34.88** (\$20.00+ \$14.88= \$34.88).

Summary of Decision

6. The landlord is entitled to the following:

- A payment of \$1,589.38, determined as follows:
 - a) Rent Owing..... \$1,554.50
 - b) Hearing Expenses.....\$34.88
 - c) Total.....\$1,589.38
- An order for vacant possession of the rented premises,
- A daily payment of rent in the amount of \$27.95, beginning 11 May 2022, and continuing to the date the landlord obtains possession of the rental unit; and
- 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.

10 May 2022

Date


Jaclyn Casler

Residential Tenancies Tribunal