

Residential Tenancies Tribunal

Applications: 2022 No. 0240 NL

Decision 22-0240-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:02AM on 16 May 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", participated 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 a fixed term rental agreement that is set to expire 31 May 2022. A \$750.00 security deposit was collected and is being held by the landlord.
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 \$6,500.00;
 - Payment of utilities in the amount of \$302.38;
 - Payment of other in the amount of \$750.00; 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*.

Preliminary Matters

10. The landlord amended her claim for rent owing from \$6,500 to \$7,300.

Issue 1: Payment of Rent (\$7,300.00)

Landlord's Position

11. The landlord provided a copy of the rental agreement for the rental premises located at [REDACTED] (L#2). As per this agreement, monthly rent is set at \$1,500 and due on the first of each month. The rental premises is a single family dwelling.
12. The landlord provided a copy of the rental ledger dated 25 March 2022 showing a balance of \$\$6,500 owing in rent (L#3). This represented no rent payment having been received since sometime in November 2021 with an arrears of \$6500.00 noted. The landlord testified that partial payments have been received from the tenant since that time and the current balance of rental arrears is \$7,300 as at the day of the hearing through to 31 May 2022.
13. The landlord testified that he had no issues with the tenant until September 2021 when matters of non-payment began. The landlord stated that he issued an eviction notice in September 2021 (not provided to the tribunal) which then triggered the tenant to catch up on his rental arrears.
14. The landlord stated that he has since become friends with the tenant and that he cannot afford to keep paying the tenant's rent. He testified that he is relying on a line of credit and paying interest on this line of credit in order to keep his own family and household afloat.

Tenant's Position

15. The tenant agreed that he owes the landlord \$7,300 in rent.
16. When asked why he is not paying rent, the tenant mentioned various things, including, that he owned his own business, that he sold his business, that the new business owner was in an accident, that is waiting for insurance payout, and that he is currently on unemployment.

17. The tenant acknowledged that rent is \$1,500 monthly and that it is expected to be paid at the first of each month. He stated that he normally pays rent through cash or email transfer.

Analysis

18. The landlord and tenant are in agreement that \$7,300.00 is owing in rent.
19. I accept the landlord's claim and evidence that the tenant has not paid his full rent since at least November 2021. I further accept the landlord's testimony that rental arrears of \$7,300.00 is causing significant financial strain on the landlord's own family.
20. 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.
21. As indicated in the testimony provided by the landlord, some partial payments were received from the tenant in late March and in April. With these payments applied against total rent owing, I find, consistent with testimony provided by the landlord, that the arrears stood at **\$5,800** at 30 April 2022 (\$8,000.00 - \$2,200 = \$2,200).
22. I further calculate **\$789.12** to be owing by the tenant for rent from 1 May 2022 until 16 May 2022, the day of the hearing. In addition to the above, a per diem of **\$49.32** is owed to the landlord for each day the tenant remains in the rental premises following today. These amounts were arrived at through the following calculations: **$\$1,500.00 \times 12 = \$18,000/365 = \$49.32$** .

Decision

23. The landlords' claim for rent succeeds in the amount of **\$6,589.12** (\$5,800 as at 30 April 2022 + \$789.12 for May 1 - 16 = **\$6,589.12**)

Issue 2: Payment of Utilities (\$302.38)

Landlord's Position

24. The landlord confirmed that the tenant is responsible for all utilities and referred to his written lease agreement. He further testified that Newfoundland Power contacted him in early March to inform him that power was going to be disconnected at the rental premises due to arrears on the account.
25. The landlord provided a copy of the bill, in his name for the rental premises, dated 8 March 2022, in the amount of \$302.38 (L#4). The landlord testified that he paid this bill and contacted the tenant to ensure the matter was resolved going

forward. The landlord further testified that the tenant assured him he would take care of it going forward.

Tenant's Position

26. The tenant acknowledged that he was to pay utilities, and that the landlord was required to pay down utility arrears in the amount **\$302.38**.
27. When asked if he is currently paying his own bill for Newfoundland Power at the rental premises, the tenant stated that the account is not in his name, but rather, that the account is in the name of someone associated with his business. The landlord was not aware of this, and testified that he has no access to account information (including arrears) when Newfoundland Power opens accounts for others (as required) for his rental premises.
28. When asked if there is currently a zero dollar balance with Newfoundland Power, the tenant suggested there is currently a \$650.00 balance on his account. The tenant stated that this balance would be paid within the week.

Analysis

29. The tenant acknowledged that he was to pay utilities, and that the landlord was required to pay down utility arrears in the amount **\$302.38**.

Decision

30. The landlord's claim for payment of utilities succeeds in the amount **\$302.38**.

Issue 3: Vacant Possession

Landlord's Position

31. The landlord submitted a copy of the termination notice that was sent on 25 March 2022, the same day the landlord applied to this tribunal (L#5). The notice was issued under Section 19 of the Act, for non-payment of rent, and identified a move out date of 5 April 2022.
32. The landlord testified that the termination notice was served via email using the email notice using the address provided by the tenant on the rental agreement.
33. On the day the tenant was served, he owed the landlord \$6,500 in rent. The landlord spoke repeatedly of the severe financial strain being experienced by his family, with the requirement of paying two sets of mortgages and property tax with no assistance.
34. The landlord is seeking an order for vacant possession of the rented premises

Tenant's Position

35. The tenant stated that he is still residing at the rental premises.
36. He acknowledged receiving the termination notice.
37. When asked why he had not vacated the rental premises, as required by the termination notice, he stated that he received notice of the landlord's claim against him on 4 May 2022 (the day before he was to vacate) and so he figured he would stay put and see what happens.
38. The tenant had hoped that he could reach an arrangement with the landlord.

Analysis

39. 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.

40. 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 \$6500.00.
41. 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

42. The landlord's claim for an order for vacant possession of the rented premises succeeds.
43. 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: Other (\$750.00)

Landlord's Position

44. The landlord testified that his practice is to provide tenants with a full tank of oil, with the expectation that they leave the oil tank full when they vacate the rental premises. When asked if this arrangement is specified anywhere in writing, the landlord highlighted the **Additional Obligations** section (page 4) of the rental agreement which states:

Upon vacating premises..... Oil tank MUST be filled up to the original level.

45. The landlord stated that he has never experienced any problems with previous tenants over this requirement. However, he is doubtful that the current tenant will fill the tank as required. The landlord also testified that his wife had visited the rental premises on 24 March 2022 (the day before the termination notice was issued) and noticed that the oil tank was empty.
46. The landlord provided a written document summarizing the reasons for this claim (L#6). He stated during the hearing that the tank is a 200 gallon tank.

Tenant's Position

47. The tenant acknowledged the requirement and expectation that he pay to fill the oil tank at the rental premises prior to vacating. He stated that the tank is not currently empty, and that he regularly had to be paying \$250.00 a week for oil heat at the rental premises and that this was challenging. The tenant also stated that he supplements oil heat with electric heat.

Analysis

48. The landlord is claiming compensation for the costs he incurred when filling the oil tank at the rental premises in May 2021, prior to the tenant moving in. However, this is insufficient for the purposes of awarding costs because costs cannot be awarded when damage or negligence (failure to fill the oil tank) has yet to occur.

Decision

49. The landlord's claim for payment of Other in the amount of **\$750.00** does not succeed.

Summary of Decision

1. The landlord is entitled to the following:

- A payment of \$6,891.50, determined as follows:

a) Rent Owing.....	\$6,589.12
b) Utilities	302.38
c) Total.....	<u>\$6,891.50</u>
- An order for vacant possession of the rented premises,
- A daily payment of rent in the amount of **\$49.32**, beginning 17 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.

18 May 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal