

Residential Tenancies Tribunal

Applications: 2022 No. 0279 NL

Decision 22-0279-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:16AM on 06 July 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and 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 by registered mail of the claim against him. A review of the tracking number indicates that this package was not picked up, however, subsection 42(6) of the *Residential Tenancies Act* considers items sent by registered mail to have been served “on the fifth day after mailing”.
5. The details of the claim were presented as a rental agreement that began in June 2020 and currently operates month-to-month. Current rent is set at \$870.00 a month and a security deposit in the amount of \$399.00 was collected of which the landlord testified, \$99.00 was applied to rent owing and so \$300.00 is currently held by the landlord. No copy of the written rental agreement was provided.
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 \$1,799.00;
 - Payment of Late Fees in the amount of \$75.00; 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 15 and 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 the amount of rent owing to \$2,039.00.

Issue 1: Payment of Rent (\$2,039.00)

Landlord's Position

14. The rental premises is an apartment building located at [REDACTED]. The tenant resides in unit [REDACTED].
15. The landlord provided a copy of the rental ledger dated 06 July 2022 and testified that the tenant had rental arrears of \$2,039.00 as at the day of the hearing (L#2).

Analysis

16. I accept the landlord's claim and evidence that the tenant has rental arrears in the amount of \$2039.00 as at the day of the hearing. 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.
17. As indicated in the testimony and evidence provided by the landlord, there have been a number of payments made on behalf of the tenant, however these have not covered the full amount of rent outstanding.
18. I find that consistent with testimony provided by the landlord, rental arrears stood at \$1,469.00 as of 30 June 2022 and that a partial payment of rent in the amount of \$300.00 was received on behalf of the tenant on 04 July 2022.
19. I therefore calculate the total arrears owing as at 06 July 2022 to be \$1,340.60. This amount was arrived at through the following calculations:
 - $\$870.00 \times 12 = \$10,440 / 365 = \$28.60$ per day
 $\$28.60 \times 6 = \171.60 for July 1 - 6, 2022
 - $\$1,469.00 + \$171.60 = \$1640.60$ for total possible rental arrears
 - $\$1640.60 - \300.00 July 2022 payment received = \$1,340.60

Decision

20. The landlord's claim for rent succeeds in the amount of \$1,340.60.
21. The tenant shall pay the landlord a daily rate of rent in the amount of \$28.60, beginning 07 July 2022 and continuing to the date the landlord obtains possession of the rental unit.

Issue 2: Payment of Late Fees (\$75.00)

Landlord's Position

22. The landlord has requested late fees in the amount of \$75.00. He testified that the tenant has not had a zero dollar balance on their account since October 2020.

Analysis

23. 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.*

24. 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.

25. As the tenant has been arrears since at least 02 November 2020, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession Landlord's Position

27. The landlord issued a termination notice to the tenant on 23 March 2022 under section 19 of the *Act* (L#3). This notice was hand delivered by the landlord to the tenant on the day it was issued. The stated move out date was identified as 03 April 2022.

28. According to the landlord's records, the tenant had arrears in the amount of \$1,249.00. when he was issued a section 19 Termination Notice under the *Act*.

29. The landlord is seeking an order for vacant possession of the rental premises because the tenant has not paid the entirety of his rental arrears and has not vacated the rental premises as required.

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. I accept the landlord's claim and evidence that the tenant was in arrears in the amount of \$1,249.00 when the termination notice was issued and remains in arrears as at the day of this hearing.
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 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: Hearing Expenses

Relevant submissions

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


Summary Decision

37. The landlord is entitled to the following:

- A payment of \$1,435.60, determined as follows:
 - a) Rent Owing.....\$1,340.60
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) Total\$1,435.60
- An order for vacant possession of the rented premises.
- A payment of a daily rate of rent in the amount of **\$28.60**, beginning 07 July 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.

12 July 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal