

Residential Tenancies Tribunal

Applications: 2022 No. 0293 NL

Decision 22-0293-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:31AM on 1 June 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", participated 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 confirmed that this mail was picked up by the tenant on 4 May 2022.
5. The details of the claim were presented as an originally fixed term agreement that now operates month-to-month. The tenant first took possession of the rental unit on or around 1 August 2020 and paid a security deposit of \$80.00. No copy of the written rental agreement was provided, and current rent is set at \$905.00 a month.
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 \$174.53;
 - 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*.

Preliminary Matters

10. The landlord amended the amount of rent owing down to \$108.00.
11. The tenant's rent has historically been paid on his behalf by NFLD Housing and AES – AES tends to pay their subsidy on the first of each month while NFLD Housing will pay their monthly subsidy in advance by making payments near the end of each previous rental period.

Issue 1: Payment of Rent (\$108.00)

Landlord's Position

12. The rental premises is an apartment building located at [REDACTED] in [REDACTED]. The tenant resides in unit # [REDACTED].
13. The landlord provided a copy of the rental ledger dated 1 June 2022 showing a balance of \$435.68. (L#2). According to these records, the tenant had arrears in the amount of \$174.53 when he was issued a section 19 Termination Notice under the *Act*.
14. Because the vast percentage of the tenant's rent (+-\$10.00) is paid for by AES and NFLD Housing, the tenant regularly has significant positive and negative balances on his account, as rent comes due at the first of every month and then his monthly subsidies are received by the landlord.
15. The landlord testified that the tenant's arrears began accumulating after his monthly rent was increased in August 2021 from \$895.00 per month to \$905.00 per month.
16. The landlord further testified that she was willing to remove the 29 December 2021 charge of \$83.38 found on the ledger from the tenant's arrears. This charge was related to an apartment door lock rekey and "issues with keys".

Tenant's Position

17. The tenant testified to his willingness to pay the \$108.00 in arrears.

Analysis

18. Applications for orders of the Director for rent to be paid, such as this application, typically award the landlord with a payment of rent to the date of the hearing and a per diem thereafter. Such a calculation becomes difficult however, when working from a rental ledger that shows multiple entries each month for subsidies received, either directly against the month for which rent was owed, or as future rent.
19. According to testimony provided by the landlord, the tenant's rental arrears have been accumulating since his monthly rent was increased in August 2021 but his monthly rental subsidies were not. I also acknowledge the landlord's testimony where she stated that she would remove the \$83.38 charge (related to keys and locks) from the tenant's rental ledger.
20. The first step towards calculating the landlord's entitlement for rent to the day of the hearing, is to identify the rental per diem using the specified monthly rent of \$905.00:

$$\$905.00 \times 12 = \$10,860.00 / 365 = \$29.75 \text{ (per diem)}$$

21. Because the hearing occurred on 1 June 2022, the landlord is entitled to rent up to 31 May 2022 and a per diem value of \$29.75 for 1 June 2022 and each day thereafter that the tenant remains in possession of the rental premises. According to the rental ledger provided, the tenant had a credit of \$469.32cr on his account as at 31 May 2022.
22. If we remove the \$83.38 charge from this negative balance (as stated by the landlord), we arrive at a credit of \$552.70cr (e.g., \$469.32credit - \$83.38debit) for the tenant as at 31 May 2022. If we then add in the stated arrears of \$108.00debit from this credit, the tenant is left with a total rental credit of \$444.70 (e.g., \$552.70credit + \$108.00debit) as at 31 May 2022.
23. Looking then to day of the hearing (1 June 2022), the landlord is entitled to a per diem for this day – bringing the tenant's rental balance to a total credit of \$414.95cr (\$444.70credit + \$29.75debit = \$414.95credit) as at the day of the hearing, using the rental ledger provided by the landlord.
24. The tenant has this credit on his account, despite arrears, for two reasons:
 - The landlord received the tenant's June subsidy from NFLD Housing on 27 May 2022 in the amount of \$651.00; and

- The hearing was on 1 June 2022 and so rent owing is only calculated for a single day (e.g., 1 June 2022).

Decision

25. The tenant has credit for rent in the amount of \$414.95cr as at the start of the hearing that was called at 11:31AM on 01 June 2022.
26. For each day beginning 02 June 2022 that the tenant remains in possession of the rental premises, the landlord shall charge a daily rate of rent (per diem) in the amount of \$29.75 against the credit for rent as noted.

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

Landlord's Position

27. The landlord has assessed late fees in the amount of \$75.00 in response to the rental arrears that have accumulated since the tenant fell into arrears in August 2021 as a result of his rental subsidies no longer covering his rent.

Analysis

28. 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.

29. 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.

30. The landlord testified that rental arrears have been accumulating in the tenant's name since at least August 2021 when the tenant's monthly rent was increased and his monthly rental subsidies no longer covered the full amount of rent.
31. However, I note when reviewing the tenant's rental ledger, that his account is frequently in a significant negative balance each month once all of his rental subsidies are received from NFLD Housing and AES. Consequently, there does

not appear to be a straightforward carry over of arrears on the tenant's account, instead they come and go as payments are received.

32. As an example of this, the tenant was in arrears during the month of May 2022 from 2 May through to 26 May until the June 2022 subsidy from NFLD Housing was processed on 27 May 2022. I am able to calculate late fees owing for this period of time.
33. The landlord is entitled to \$5 for the 2nd of May and then \$2 for each day between the 3rd and 26th of May (24 days = \$48). In total, I find that the landlord is entitled to \$53.00 in late fees.

Decision

34. The landlords' claim for late fees succeed in the amount of \$53.00.

Issue 3: Vacant Possession

Landlord's Position

35. The landlord issued a termination notice to the tenant on 7 April 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 and posted to the door. The stated move out date was identified as 18 April 2022.
36. The landlord testified that the tenant was in arrears as a result of the \$10.00 shortfall that had been occurring in his rent payments (paid by NFLD Housing and AES) each month since August 2021 when the tenant's monthly rent was increased by \$10.00.
37. The landlord is seeking an order for vacant possession of the rental premises because the tenant has not paid their rental arrears and has not vacated the rental premises as required.
38. The landlord testified that she understands it to be the responsibility of the tenants to inform their funding agencies of any rental increases if and when rental increases occur. She also testified how the tenant would have received a rental increase letter 6 months prior to the increase occurring, providing him with adequate time to reach out to NFLD Housing and AES (his funders).
39. The landlord also testified to her frequent communications to tenants if and when they fall into rental arrears and her willingness to enter into payment plans for reimbursement of arrears as needed. The landlord testified that she did not receive any communications from the tenant regarding his arrears.

Tenant's Position

40. The tenant testified that he did not realize he was responsible for communicating with NFLD and AES regarding the amount of rent they were paying on his behalf.

41. The tenant testified that he reached out to NFLD Housing regarding a separate dispute application that had been filed against him (2022 No. 0195 NL). He stated that he first received a termination notice in February 2022, saying that he had to be out for no reasons and then he received a second notice in April for non-payment of rent saying that he had to leave even sooner (18 April 2022 instead of 31 May 2022).
42. The tenant expressed frequent confusion regarding his having to attend this hearing for non-payment of rent as he had been anticipating the hearing scheduled for 13 June 2022 related to the section 18 Termination notice received in February 2022. The tenant also testified to his belief and understanding that the rental shortfall and rental arrears had been taken care off through his discussions with NFLD Housing.

Analysis

43. 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.

44. I accept the landlord's claim and evidence that the tenant has not kept up to date on the shortfall in rent on his account since his rent was raised in August 2021. According to the landlord's records, the tenant was in arrears in the amount of approximately \$98.00 on the day the termination notice was issued.
45. 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

46. The landlord's claim for an order for vacant possession of the rented premises succeeds.
47. 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

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

Summary Decision

50. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- As the tenant has a rent credit for the period ending 01 June 2022 in the amount of \$341.95, determined as follows:
 - a) Rent Credit.....\$414.95cr
 - b) LESS: Late Fees (\$53.00)
 - c) LESS: Hearing Expenses..... (\$20.00)
 - d) Total Credit \$341.95

A payment of a daily rate of rent from the tenant in the amount of \$29.75, beginning 02 June 2022 to be deducted from the tenant's credit balance 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.

9 June 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal