

Residential Tenancies Tribunal

Applications: 2022 No. 0315 NL

Decision 22-0315-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:04AM on 16 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 not provided by the landlord. The tenant waived his right to service, acknowledging that he received the hearing information package and used that information to attend the call.
5. The details of the claim were presented as an originally fixed term agreement, starting September 2018, and now running month-to-month. Current rent is set at \$935.00 and a security deposit of \$420.00 was collected. A copy of the written rental agreement was provided (L#1).
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 \$935.00;
 - Payment of Late Fees in the amount of \$37.00;
 - An order to use the security deposit of \$420.00 against monies owed; 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 14, 15 and 19 of the *Act*.

Preliminary Matters

10. The landlord amended the amount of rent owing to \$2,380.00 and increased the amount of late fees owing to \$75.00.

Issue 1: Payment of Rent (\$2,380.00)

11. The rental premises is an apartment building complex located at [REDACTED]. The tenant resides in Building [REDACTED], unit [REDACTED].
12. The landlord provided a copy of the rental ledger dated 16 June 2022 showing a balance of \$2,380.00 (L#2). According to these records, the tenant last had a zero dollar balance on 23 March 2022 and has not successfully paid full rent on the day that it is due since that time. The landlord testified that current balance of rental arrears is \$2,380.00, as at the day of the hearing.

Tenant's Position

13. The tenant acknowledged that he owes the landlord money and wants to pay what he owes. The tenant testified that he has not exactly been working with the landlord to avoid arrears, and asked what he needs to do to pay what he owes.

Analysis

14. I accept the landlord's claim and evidence that the tenant has rental arrears in the amount of \$2,380.00 as at the day of the hearing. However, I also note that this figure includes the late fee of \$75.00 which will be dealt with separately in this report. As such, I calculate that the tenant owes \$2,305.00 (\$2,380.00 - \$75.00 (late fees charged)) as at 30 June 2022.

Decision

15. The landlords' claim for rent succeeds in the amount of \$2,305.00.

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

Relevant Submission

16. The landlord has assessed late fees in the amount of \$75.00.

Analysis

17. 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.*

18. 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.

19. As the tenant has been arrears since at least 13 April 2022 (the day the landlord applied to this Tribunal), the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession

Landlord's Position

21. The landlord submitted evidence of three termination notices having been issued to the tenant under section 19 of the *Act* since 01 January 2022 (L#3). The landlord testified that their practice is to hand deliver each notice on the day after it was issued, and notices are then left at the door by the building caretaker.

- Termination notice # 1: Issued on 12 January 2022 with a stated move out date of 27 January 2022.
 - Termination notice # 2: Issued on 18 February 2022 with a stated move out date of 03 March 2022.
 - Termination notice # 3: Issued on 10 March 2022 with a stated move out date of 23 March 2022.
22. The landlord testified that the tenant was in arrears in the amount of \$952.00 on the day the Termination notice # 3 was issued. She further testified that the tenant made a number of payments thereby returning his account to zero on 23 March 2022, the stated moved out date of the Termination notice # 3.
23. The landlord is seeking an order for vacant possession of the rental premises and testified that the tenant has not vacated the rental premises as expected.

Tenant's Position

24. The tenant testified that he has not received a termination notice since March 2022. He stated that he wants to move out and wants to know when he needs to leave.

Analysis

25. 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.

26. I accept the landlord's claim and evidence that the tenant has not paid their rent as required. According to her records, the tenant was in arrears in the amount of \$910.00 on the day the termination notice was issued. I also note that the tenant made payments and brought his account to zero (\$00) before his stated move out date of 23 March 2022. And according to subsection 19(2) of the *Act*, this would typically cancel the Termination notice #3 issued on 10 March 2022:

(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.

27. There is an allowance however within subsection 19(3) of the *Act* whereby this provision "*does not apply where notice is given to a tenant under paragraph (1)(a) or (b) more than twice in a 12 month period*". This means, that if Termination notice #3 is the third VALID notice issued to the tenant, in the last 12 months, they *should* be entitled to an order for vacant possession of the rental premises.
28. Looking back at Termination notice #1, this was issued on 12 January 2022 when the tenant was in arrears in the amount of \$945.00. Termination notice #2 was then issued on 18 February 2022 when the tenant was in arrears of \$935.00 after bringing his account down to zero (\$00). Termination notice #3 was then issued on 10 March 2022 when the tenant was in arrears in the amount of \$910.00.
29. I note that the tenant did not bring his account down to zero (\$00) in between the issuance of Termination notice # 2 and Termination notice #3. I also note that the delivery address of Termination #3 is incomplete, referring only Unit 403 at 105 Terra Nova Road and not Unit 403, Building 3A as is indicated on the other two notices, the rental ledger, and the rental agreement.
30. As such, I find that Termination notice #3 is not a valid notice and because it is not a valid third notice (twice or more), the landlord's application for an order for vacant possession does not succeed.

Decision

31. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 4: Security Deposit \$420.00 Relevant Submissions

32. Evidence of a \$420.00 security deposit having been collected was provided on the rental ledger and the rental agreement. The landlord requested to use the security deposit against rent monies owed.

Analysis

33. Because the landlord did not succeed with her request for an order for vacant possession, her request to apply the security deposit against rent monies owing also does not succeed since the tenant retains possession of the rental unit.

Decision

34. The landlord's claim to use the \$420.00 security deposit against rent monies owing does not succeed.

Summary Decision

35. The landlord is entitled to the following:

- A payment from the tenant in the amount of \$2,380.00

a) Rent Owing\$2,305.00


b) Late Fees\$75.00

c) Total Owing to Landlord\$2,380.00

36. The landlord's claim for an order for vacant possession of the rental premises does not succeed.

20 June 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal