

Residential Tenancies Tribunal

Applications: 2022 No. 0328 NL

Decision 22-0328-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:10AM on 13 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 email, of the claim against him. Proof of email service as well as proof of previous emails with the tenant, using that same email address were also provided.
5. The details of the claim were presented as a long standing month-to-month agreement, signed 08 June 2018, with rent set at \$263.00 per month. No Security Deposit was collected and a copy of the written rental agreement was provided (L#2).
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 \$1,789.77;
 - 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 18 and 19 of the *Act*.

Preliminary Matters

10. The tenant joined the call from [REDACTED] and testified that he has not been in the rental premises since December 2021 but that he had intended to return.
11. The landlord amended her claim and increased the amount of rent owing \$2,315.77.

Issue 1: Payment of Rent (\$2,315.77)

Landlord's Position

12. The rental premises is 3 bedroom unit located at [REDACTED] [REDACTED]. The landlord provided a copy of the rental ledger showing a June 2022 balance of \$2,315.77 (L#3). She reviewed the ledger and testified that the tenant last had a zero dollar balance in May 2020.
13. The landlord testified that current balance of rental arrears is \$2,315.77 as at the day of the hearing and that the tenant has made no rent payments since 07 January 2022.

Tenant's Position

14. The tenant testified that he knew he was "two to three months" behind in rent but was "not aware" that he owed so much money. He testified that he previously paid \$313.00 a month in rent because, through discussions with a representative of the landlord, he knew he had arrears and so he was paying an extra \$50.00 a month to catch up on these arrears.
15. The tenant testified that he has a traumatic brain injury and that his inability to represent himself is well documented with the landlord. He further testified that his injury causes poor judgment and decision making. He testified that he has done his best to communicate his needs with the landlord. Related to this, the

tenant testified that he has been in and out of the hospital, in and out of the emergency unit, as well as attending a pain management centre.

16. The tenant testified that he has “no idea” what the request for April, May or June rent was about because he recalled an end of March 2022 termination date from his communications with his landlord. The tenant also testified that he has not resided in the rental premises since December 2021.

Analysis:

17. I accept the landlord’s claim and evidence that the tenant has rental arrears in the amount of \$2,315.77 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 she is entitled to payment of rent to the date of the hearing and a per diem thereafter (14 June 2022 onwards) for each day that the tenant remains in possession of the rental unit.
18. As indicated in the testimony provided by the landlord, the tenant has not made a rent payment since 08 January 2022. I find that consistent with testimony and evidence provided by the landlord, rental arrears stood at \$2,052.77 as at 31 May 2022.
19. I therefore calculate the total arrears owing as at 13 June 2022 to be \$2,165.22. This amount was arrived at through the following calculations:
 - $\$263.00 \times 12 = \$3,156.00 / 365 = \$8.65 \text{ per day}$
 $\$8.65 \times 13 = \$112.45 \text{ for June 1 - 13, 2022}$
 - $\$2,052.77 + \$112.45 = \$2,165.22 \text{ for total possible rental arrears}$

Decision

20. The landlord’s claim for rent succeeds in the amount of \$2,165.22.

Issue 2: Vacant Possession

Landlord’s Position

21. The landlord issued two termination notices to the tenant on 24 February 2022. These notices were issued by registered mail, regular mail, email and also posted to the door of the tenant’s rental unit. An affidavit of service was provided specific to the email service of these notices (L#4).
22. The section 19 notice that was issued to the tenant identified a move out date of 31 March 2022 (L#5) and the section 18 notice that was issued to the tenant identified a move out date 31 May 2022.

23. The landlord testified that the tenant was in arrears in the amount of \$1,263.77 on the day the termination notice was issued. She further testified that the tenant has not made a single rent payment since either termination notice was issued on 24 February 2022.
24. The landlord is seeking an order for vacant possession of the rental premises because the tenant has not paid their rental arrears and is still in possession of the rental unit, despite not living there. The landlord testified that the tenant originally took occupancy of the rental unit with his son and this is why the tenant has possession of a 3 bedroom unit.

Tenant's Position

25. The tenant testified that his son is a student at the University [REDACTED]. He testified that he previously rented spare rooms in his rental unit to university students with no problem, and so he decided to rent to students again since he has so many bedrooms available. He testified that he did this, because he was having problems and so he decided to have people live with him again while he slept in the living room of the unit. At one point he had three people living with him before it "went downhill".
26. The tenant testified that he does not recall receiving any of the termination notices served to him on 24 February 2022. However, he did testify to communications with a representative of the landlord who had informed him that he was being evicted for "violating the lease". The tenant testified that this came about after he received notice of, and allowed an inspection of his unit. He also testified that he tried for many months to get copy of the related inspection report so that he could "remedy the situation".
27. The tenant testified that Human Rights legislation is "binding legislation on the Landlord Tenant Act" and that he "did not get anywhere" with representatives of his landlord when he suggested that they were being "discriminatory" and not offering "compassionate grounds". He testified that communication with his landlord was "terrible from December January (2022) onwards", that things "escalated" and that there was "no compassion at all".
28. The tenant ended his testimony by stating that he is not quite capable of representing himself due to a well documented medical condition but that he did his best and tried his best. The tenant testified that he believed the students who were occupying his rental premises have moved.
29. When asked to confirm an observation that he has not been at the rental unit since Christmas 2021, the tenant testified that he has not moved, that it has always been his unit, and that all his personal belongings are there.

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 has not paid their rent as required. According to his records, the tenant was in arrears in the amount of \$1,263.77 on the day the termination notice was issued.

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.

33. Specific to concerns raised by the tenant regarding his medical condition and inability to represent himself, I found that he responded to questions, spoke clearly when asked to contribute and appeared to be following the proceedings closely. As such, I felt comfortable proceeding with the hearing as scheduled.

Decision

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

35. 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

36. The landlord claimed \$20.00 for the expense of applying for the hearing (L#7).
37. As the landlords' claim has been successful, the tenant shall pay this hearing expense.

Summary Decision

38. The landlord is entitled to the following:

- A payment of \$2,185.22, determined as follows:
 - a) Rent Owing..... \$2,165.22
 - b) Hearing Expenses.....\$20.00
 - c) Total.....\$2,185.22
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$8.65, beginning 14 June 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.

14 June 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal