

Residential Tenancies Tribunal

Applications: 2022 No. 0333 NL

Decision 22-0333-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16AM on 14 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", 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 associated with this service indicates that the dispute package was picked up on 06 May 2022.
5. The details of the claim were presented as currently month-to-month agreement that has continued since January 2018. Monthly rent is \$1,070.00 and a security deposit in the amount of \$475.00 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 \$2,190.00.00;
 - Payment of Late Fees in the amount of \$75.00;
 - An order to use the security deposit of \$475.00 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* 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 \$4,405.00.

Issue 1: Payment of Rent (\$4405.00)

14. The rental premises is an apartment building located at [REDACTED] [REDACTED] The tenant resides in Unit [REDACTED].
15. The landlord provided a copy of the rental ledger dated 30 May 2022 showing a balance of \$4,405.00 (L#2). According to these records, the tenant last had a zero dollar balance in February 2022 and has not paid rent since his March 2022 payment was returned for insufficient funds. The landlord testified that current balance of rental arrears is \$4,405.00 as at the day of the hearing.

Analysis:

16. I accept the landlord's claim and evidence that the tenant has rental arrears in the amount of \$4,405.00 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 landlord's actual claim for rent owing through to the end of June 2022 to be \$4,330.00 (\$4,405.00 - \$75.00) and \$3,260.00 as at 31 May 2022.
17. Because the landlord is also seeking an order for vacant possession of the rental premises, I find that she is entitled to payment of rent to the date of the hearing and a per diem thereafter for each day the tenant retains possession of the rental premises.
18. I therefore calculate the total arrears owing as at 14 June 2022 to be \$3,752.52. This amount was arrived at through the following calculations:
 - $\$1,070.00 \times 12 = \$12,840/365 = \$35.18 \text{ per day}$
 $\$35.18 \times 14 = \$492.52 \text{ for June 1 - 14, 2022}$
 - $\$492.52 + \$3,260.00 = \$3,752.52 \text{ for total possible rental arrears}$

Decision

19. The landlord's claim for rent succeeds in the amount of \$3,752.52.

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

Relevant Submission

20. The landlord's have assessed late fees in the amount of \$75.00.

Analysis

21. 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.

22. 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.

23. As the tenant has been arrears since at least 2 March 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

24. The landlord's claim for late fees succeed in the amount of \$75.00.

Issue 3: Vacant Possession

Relevant Submissions

25. The landlord issued a termination notice to the tenant on 8 March 2022 under section 19 of the Act (L#3). This notice was posted on the tenant's door on 09 March 2022 by the Building Manager and the stated move out date was identified as 21 March 2022.

26. The landlord testified that the tenant was in arrears in the amount of \$1,120.00 (e.g., rent of \$1,070.00 plus a \$50 NSF charge) on the day the termination notice was issued. She further testified that the tenant has made no rent payments since that time.

27. 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.

Analysis

28. 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.

29. I accept the landlord's claim and evidence that the tenant has not paid their rent as required since March 2022. According to her records, the tenant was in arrears in the amount of \$1,120.00 on the day the termination notice was issued.
30. 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

31. The landlord's claim for an order for vacant possession of the rented premises succeeds.
32. 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: Security Deposit \$475.00

Relevant Submissions

33. The receipt for a \$475.00 security deposit collected on 03 November 2020 was provided (L#4). Contrary to the date noted on the receipt, the landlord testified that this deposit was collected prior to the tenant taking occupancy of his unit in January 2018. She indicated that this inconsistency in dates was due to the landlord's company updating their software system after 2018.

Analysis

34. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

- (a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*
- (b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*

(12) *A landlord who does not make an application in accordance with subsection*

(11) *shall return the security deposit to the tenant.*

(14) *Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.*

35. According to the landlord's records, a security deposit in the \$475.00 was collected and they wish to use it against rent monies owing.
36. Because the amount owing to the landlords for rent and late fees is in excess of the security deposit collected, I find that the landlord is entitled to use of the full amount of the security deposit.

Decision

37. As the landlord's monetary claim has been successful, they shall retain the full security deposit in the amount of \$475.00 to be used against money owing.

Issue 4: Hearing Expenses

Relevant submissions

38. The landlord submitted an expense claim in the amount of \$33.44 (L#5).
39. The landlord claimed \$20.00 for the expense of applying for the hearing and \$13.44 for the expense of sending registered mail to the tenant.
40. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Summary Decision

41. The landlord is entitled to the following:

- An order for use of the full amount (\$475.00) of the security deposit collected;
- A payment of \$3,385.96, determined as follows:

a) Rent Owing.....	\$3,752.52
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$33.44
d) Less - Security Deposit.....\$475.00	
e) Total.....	<u>\$3,385.96</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$35.18, beginning 15 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.

15 June 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal