

Residential Tenancies Tribunal

Applications: 2022 No. 0351 NL

Decision 22-0351-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:03AM on 09 June 2022 via teleconference.
2. The applicant, [REDACTED], 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 her. Proof of email service was also provided (L#2).
5. The details of the claim were presented as a new rental agreement signed with the tenant who had been residing in the rental premises prior to it being purchased by new owners in January 2022. This new rental agreement was dated 29 January 2022 and a copy provided (L#3). Monthly rent was set at \$900.00 and both parties agreed that no security deposit was paid or collected by either the previous or current 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 \$900.00; 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 18 of the *Act*.

Preliminary Matters

10. The tenant first moved into the rental premises, an apartment in a single family home, in May 2021. This single family home was then purchased by new owners in January 2022 and the landlord was retained by the property owners for his property management services. The landlord signed the updated rental agreement with the tenant and issued the tenant a section 18 termination notice (L#4) on the same day (29 January 2022).
11. The landlord amended his application to state that he is currently seeking \$1300.00 in rent.

Issue 1 – Payment of Rent (\$1,300.00)

Landlord Position

12. The landlord initially testified that the tenant only made two payments of \$250.00 towards payment of May 2022 and no payment against June 2022 rent before it was revealed that rent was paid by direct deposit to him by AES on behalf of the tenant. The landlord then clarified that he informed AES that he did not require June rent as the tenant was to be vacating the rental premises on 30 April 2022.
13. Because the landlord had already received May 2022 rent for the tenant from AES, he testified that he transferred the full value (\$900.00) to the tenant when she stated she needed money for moving on 30 April 2022.
14. The landlord testified that he has received no rent for the month of June 2022 from the tenant.

Tenant's Position

15. The tenant testified that she was seeking the support of her MHA [REDACTED] for the purposes of connecting with Newfoundland Housing. During this process, the tenant testified that she received guidance from his office suggesting that the section 18 termination notice she received was invalid, and that she was entitled to remain in the rental premises until the date of the hearing.
16. However, the tenant acknowledged that at the time that she received this guidance on 29 April 2022, she did not have an active application for dispute resolution put before this Tribunal. The tenant also acknowledged that she was only served notice of the landlord's application for dispute resolution on 10 May 2022. The tenant remained in the rental premises following the guidance from her MHA's office.

17. Regarding the \$900.00 that she received from the landlord in late April 2022, the tenant testified that she had made an agreement with the landlord that she would rent weekly until the hearing. She testified that she made one payment of \$250.00 to the landlord in May 2022 using the remainder of the money she received from the landlord. She further testified that she made the final \$250.00 payment to the landlord using her child benefit later in May 2022. The tenant stated that she lost her income source after the landlord informed AES that he no longer required her rent.

Analysis

18. The landlord was not immediately forthcoming with the full details and provided inconsistent testimony that only become complete with testimony from the tenant. Where the landlord stated that he was seeking \$1,300.00 in unpaid rent, I am not convinced by his original claim that the tenant has rental arrears in that amount.
19. Because the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to rent to the date of the hearing and a per diem thereafter.
20. I therefore calculate rent owing for June 2022 (1st through 9th) to be \$266.31. This amount was arrived at through the following calculations:
- $\$900.00 \times 12 = \$10,800 / 365 = \$29.59$ per day
 $\$29.59 \times 9 = \266.31 for June 1 - 9, 2022
21. Considering that the landlord testified to his receipt of full May rent from AES and testified further to his receipt of \$500.00 in payments from tenant1 that same month, I find that that the tenant has a rental credit on her account in the amount of \$233.69 as at the day of the hearing. This credit is arrived at through the following calculation:
- $\$500.00$ (tenant payment in May 2022) - $\$266.31 = \233.69

Decision

22. The tenant has a credit for rent in the amount of \$233.69cr as at the day of the hearing (09 June 2022).
23. For each day beginning 10 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 \$29.59 against the credit for rent as noted.

Issue 2 – Vacant Possession Landlord Position

24. The landlord testified that he issued a termination notice to the tenant on 29 January 2022 (L#4). This notice was issued under section 18 of the *Act* and

identified 30 April 2022 as the stated move out date. The landlord testified that the notice was served to the tenant by email.

Tenant's Position

25. The tenant acknowledged receiving the termination notice on the day it was issued.

Analysis

26. Section 18 of the *Act* allows a landlord to terminate a rental agreement on three (3) months notice without having to provide reasons to either the tenant or to this Tribunal. The validity of such a notice is determined by its compliance with any number of provisions of the *Act* - if and where a notice is found to not comply with any particular provision, it is deemed not valid.
27. Specific to a termination notice issued by a landlord under section 18 of the *Act*, it is required to comply with each of the following to be deemed valid:
- Timelines for issuing a notice (18(2) of the *Act*);
 - Specific details on notices issued (18(9) of the *Act*);
 - Specific details on notices issued (34 of the *Act*); and
 - Requirements for service of the notice (35 of the *Act*).
28. Regarding the Section 18 Termination Notice issued to the tenant on 29 January, 2022, I find that it is a valid notice because it meets all the requirements set out in this section of the *Act*, and as it was properly served.

Decision

29. The landlord's claim for an order for vacant possession of the rented premises succeeds.
30. 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.

Summary Decision

31. The landlord is entitled to the following:
- An order for vacant possession of the rented premises,
 - An order for payment of a daily rate of rent from the tenant in the amount of \$29.75, beginning 10 June 2022 to be deducted from the tenant's credit balance of \$233.69cr 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