

Residential Tenancies Tribunal

Applications: 2022 No. 0377 NL

Decision 22-0377-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:08AM on 22 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 registered, of the claim against her. A review of the tracking number associated with this mail indicates that the information package was picked up.
5. The details of the claim were presented as long standing rental agreement, going back approximately 12 years. The landlord could not recall whether or not a security deposit was collected and there is no current written rental agreement. The landlord had believed monthly rent to be \$1,090.00 but agreed that it is \$990.00 once he was corrected by the tenant.
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 \$1,980.00; 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 19 of the *Act*.

Preliminary Matters

10. The landlord amended the amount of rent owing to \$3,960.00.

Issue 1: Payment of Rent (\$3,960.00)

Landlord's Position

11. The rental premises is main floor rental unit located at [REDACTED] [REDACTED]. It has been occupied by the tenant and her former wife, who is now deceased.
12. The landlord testified that he attended the teleconference from a work site. He initially testified that monthly rent was \$1,080.00 and then stated that monthly rent in the amount of \$990.00 was acceptable. He testified that monthly rent is paid in cash, and that it is collected by someone attending the rental unit.
13. The landlord did not provide a formal rental ledger.

Tenant's Position

14. The tenant acknowledged that she has not paid rent since March 2022.

Analysis

15. The tenant does not dispute that rent is owing. I accept that rent has not been paid for March, April, May or June 2022. Based on a monthly rental amount of \$990.00, this would make for arrears of \$3,960.00 through to 30 June 2022.
16. Because the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to payment of rent to the date of the hearing and a per diem from 23 June 2022 onwards until the landlord regains possession of the rental unit.

17. I find that consistent with testimony provided that rental arrears stood at \$2,970.00 as at 31 May 2022 and that total arrears as at the day of the hearing to be \$3,686.10.
18. This amount was arrived at through the following calculations:
 - $\$990.00 \times 12 = \$11,880.00 / 365 = \$32.55$ per day
 - $\$32.55 \times 22 = \716.10 for June 1 - 22, 2022
 - $\$716.10 + \$2,970.00 = \$3,686.10$ for total possible rental arrears

Decision

19. The landlords' claim for rent succeeds in the amount of \$3,686.10.

Issue 2: Vacant Possession

Landlord's Position

20. The landlord testified that he previously had good relationship with the tenant and that he originally requested in August 2021 that she find alternative accommodations effective April 2022 so that he could renovate the residential premises in advance of placing it for sale. He thought that this amount of notice was sufficient.
21. The landlord testified that he issued a termination notice to the tenant on 27 April 2022 under section 19 of the Act (L#2). This notice was taped to the side of the tenant's door. The stated move out date was identified as 08 May 2022.
22. The landlord testified that the tenant was in arrears for two month's rent at the time he issued the section 19 notice. He further testified that no rent payments have since been received.
23. 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.

Tenant's Position

24. The tenant testified that she would have been more likely to pay her rent if the landlord had met with her over coffee and was not always so confrontational, knocking on her door.
25. The tenant testified that her wife has been the primary breadwinner.
26. The tenant testified that she is seeking affordable housing. She stated that she has social anxiety and medical documentation related to her needing a support

animal and her inability to stay in a group shelter if evicted. No documentation was provided to this tribunal.

27. The tenant testified that she paid her rent in full after her wife died (September 2020) and that recently there have been some unexpected expenses. The tenant testified that she always pays her bills in full.
28. The tenant stated her acknowledgment of termination notices received.

Analysis

29. 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.

30. I accept the landlord's claim and evidence that the tenant has not paid their rent as required since at least February 2022. According to his records, the tenant was in arrears in the amount of \$1,960.00 on the day the termination notice and has not made any rent payments since that time.
31. 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

32. The landlord's claim for an order for vacant possession of the rented premises succeeds.
33. 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

34. The landlord is entitled to the following:
 - An order for the payment of rent in the amount of \$3,686.10.
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$32.55, beginning 23 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.

22 June 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal