

Residential Tenancies Tribunal

Application: 2022 No. 0389 NL

Decision 22-0389-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:20AM 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 "tenant1", did not participate in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as "tenant2", did not participate in the hearing.
5. An affidavit of service was provided by the landlord confirming that two physical copies of all documentation were served personally to the tenants at their rental premises (L#1 # 2). The landlord testified that he lives out of province and so he retained the services of a professional legal firm to ensure that everything was done appropriately and to also protect the safety of his father-in-law who would have otherwise been expected to serve the tenants.
6. The details of the claim were presented as fixed term agreement that began 01 September 2021. Rent was set at \$800.00 per month and a security deposit of \$350.00 was collected. The rental agreement was verbal and so no written rental agreement was provided.
7. 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

8. The landlord is seeking the following:
 - Payment of Rent in the amount of \$800.00;
 - An order for compensation for damages in the amount of \$1,500.00; and
 - An order for vacant possession.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case is section 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*. The following policies were also cited:
 - Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property
 - Residential Tenancies Policy 12-001 Recovery of fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF

Preliminary Matters

11. The tenants were not present or represented at the hearing and I was unable to reach them by telephone despite attempting to make contact on multiple numbers. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
12. 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 respondents fail 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.
13. As the tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
14. The landlord amended the amount of rent owing to \$1,600.00.

Issue 1: Payment of Rent (\$1,600.00)

15. The rental unit is a basement apartment located at [REDACTED]
[REDACTED].
16. The landlord provided a copy of the rental ledger showing a balance of \$800.00 for May 2022 (L#3) which he verbally amended to \$1600.00 because rent has not been received for June 2022. According to these records, the tenants have

not always paid the full amount of rent on the day that it is due and have not successfully paid rent since April 2022. The landlord testified that current balance of rental arrears is \$1,600.00 as at the day of the hearing.

Analysis

17. I accept the landlord's claim and evidence that the tenants have rental arrears in the amount of \$1,600.00 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 he is entitled to payment of rent to the date of the hearing and a per diem for each day from 23 June 2022 onwards until the landlord regains possession of the rental premises.
18. I find that consistent with testimony provided by the landlord, rental arrears stood at \$800.00 at 31 May 2022. I therefore calculate the total arrears owing as at 22 June 2022 to be \$1,378.60. This amount was arrived at through the following calculations:
 - $\$800.00 \times 12 = \$9,600/365 = \$26.30 \text{ per day}$
 $\$26.30 \times 22 = \$578.60 \text{ for June 1 -22, 2022}$
 - $\$800.00 + \$578.60 = \$1,378.60 \text{ for total possible rental arrears}$

Decision

19. The landlords' claim for rent succeeds in the amount of \$1,378.60.

Issue 2: Vacant Possession

Relevant Submissions

20. The landlord issued a termination notice to the tenants on 12 May 2022 under section 19 of the *Act* (L#4). This notice was delivered by email to tenant1 as the landlord did not have a functional email for tenant2. The landlord testified that he knew to serve by that email to tenant1 because that was the email she used for paying rent by electronic transfer. The stated move out date was identified as 23 May 2022.
21. The landlord testified that the tenants were in arrears in the amount of \$800.00 on the day the termination notice was issued.
22. The landlord is seeking an order for vacant possession of the rental premises because the tenants have not paid their rental arrears and has not vacated the rental premises as required.

Analysis

23. 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.

24. 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 \$800.00 on the day the termination notice was issued and remains in arrears to this day.

25. 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

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

27. The tenants 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: Damages (\$1,500.00)

Relevant Submissions

28. The landlord testified that the residential premises is approximately twenty years old, and that he has owned it for approximately 1.5 years. The house was previously owned by his father-in law. The landlord testified that the rental unit was last renovated 4-5 years ago and that the appliances are approximately 10 years old.
29. Evidence of a fire in the basement unit of the rental premises was collected. The landlord testified that he attempted to fix any damage caused by the fire when he visited the rental premises in Christmas 2021 but was prevented access to the unit.
30. The landlord submitted an email from tenant1 dated 2:36AM on 07 November 2021 with the subject line "Fire" and the content of:

"[Tenant2] is not good! We are both in the hospital! He had 3rd degree burns. We could not find a fire extinguisher! He is ICU. I'm so sad".
31. The landlord's father in law [REDACTED], who previously owned the residential premises and serves a property manager, was called as a witness. He testified that he attended the rental unit after the fire and saw how the fire stained the ceiling and also burned into the gypsum board behind the stove and started to burn the insulation. [REDACTED] testified that he did not fix the fire damage because the tenants were "not acting as good tenants". [REDACTED] testified that the fire was caused by fries being cooked late at night after many beverages.
32. The tenant from the main floor of the residential premises, [REDACTED] was called as a witness. He testified that he has lived with his family in their main floor rental unit for 16 years. He lives there with his wife and 18 year old daughter. He testified that the fire occurred late at night, and that soon after his wife and he noticed smoke, the fire trucks arrived. He testified to seeing tenant2 taken away on a stretcher. [REDACTED] also testified to the actions of the fire department, and how they removed significant debris from the rental unit, including a melted overhead stove fan and wall materials. [REDACTED] testified that he expects the cost of damage in the rental unit to be in excess of \$1,500.00.
33. Regarding the general conduct of the tenants, [REDACTED] testified that he and his wife have called the police at least 4 times due to their concerns for domestic disputes between tenant1 and tenant2. He also testified that he and his family have been verbally and physically assaulted by the tenants.

Analysis

34. The applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:
 - That the damage they are claiming compensation, exists;
 - That the respondent is responsible for the reported damage through a willful or negligent act; and
 - The value to repair or replace the damaged item(s).
35. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.
36. Specific to this claim for compensation, I note how tenant1 wrote in the email submitted to this tribunal, that she was unable to locate a fire extinguisher on the night of the fire. As such, I find that the landlord failed to establish on the balance of probabilities that the tenants were responsible for the reported damage through a willful or negligent act. For instance, significant damages to the rental unit could have potentially been contained if the tenants had access to a fire extinguisher.

Decision

37. The landlord's claim for compensation for damages in the amount of \$1,500.00 does not succeed.

Issue 3: Hearing Expenses

Relevant submissions

38. The landlord submitted his invoice for legal fees related to serving notice of his claim on the tenants (L#6). The total amount of this invoice is \$614.43.

Analysis

39. According to *Residential Tenancies Policy: 12-001 Recovery of fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, the only fee that is typically awarded is the hearing fee. Other allowable expenses include basic administrative costs related to service, such as expenses for registered mail and or the costs of hiring a process server.
40. Fees related to legal services are not contemplated by the policy.

Decision

41. The landlord's claim for hearing expenses in the amount of \$614.43 does not succeed.

Summary Decision

42. The landlord is entitled to the following:

- An order for payment of rent in the amount of \$1,378.60.
- An order for vacant possession of the rented premises.
- A payment of a daily rate of rent in the amount of \$26.30, 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

A black rectangular box redacting a signature.

Jaclyn Casler
Residential Tenancies Tribunal