

Residential Tenancies Tribunal

Applications: 2022 No. 0399 NL

Decision 22-0399-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:00PM on 29 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 her. 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 rental agreement running since 2014 and currently operating month to month. Monthly rent is set at 640.00 and is frequently adjusted by the landlord to %25 of the tenant's income if and when they show proof of their prior months' income. 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 \$2,636.38;
 - 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 was previously awarded an order (Order # 2018 No. 307SJ) for Vacant Possession and an award for payment of rent in the amount of \$772.50 (L#3). The landlord also received an order regarding a daily rate of rent to be paid in the amount of \$8.65 a day “beginning 31 July 2018 and continuing to the date the landlord obtains possession of the rental unit”.
11. The landlord amended her claim and increased the amount of rent owing \$2,701.38.

Issue 1: Payment of Rent (\$2,701.38)

Landlord's Position

12. The rental premises is townhouse unit located at [REDACTED]. The landlord provided a copy of the rental ledger showing a June 2022 balance of \$3,473.88 (L#4). She reviewed the ledger and testified that the tenant last had a zero dollar balance in July 2017.
13. The landlord testified that current balance of rental arrears is \$2,701.38, as at the day of the hearing. She explained that this amount represents the 2018 order for rent of \$772.50 having been subtracted from the current total arrears of \$3,473.88 (e.g., $3,473.88 - 772.50 = \$2,701.38$).
14. A review of the rent ledger indicates that the tenant has made a number of regular payments, however these payments do not cover the accumulated arrears.

Analysis:

15. I accept the landlord's claim and evidence that the tenant has significant rental arrears as at the day of the hearing. However, I disagree with the total amount

claimed. Where the landlord removed their 2018 award for rent owing (\$772.50) from the total rental arrears they identified, I note that they did not calculate rent owing according to the ordered per diem of \$8.65 from 31 July 2018 onwards.

16. 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 (30 June 2022 onwards) for each day that the tenant remains in possession of the rental unit.
17. According to the rental ledger provided by the landlord, I calculate that the tenant has paid **\$10,476.12** since the date of the July 2018 hearing and total arrears owing as at 29 June 2022 to be **\$1,867.43** (\$12,343.55 - \$10,476.12). This amount was arrived at through the following calculations:
 - $\$8.65 \times 365 = \$3,157.25$ per from 31 July 2018
 - $\$3,157.25 \times 4$ (years) = $\$12,629.00$ as at 01 August 2022
 - $\$8.65 \times 33 = \285.45 (Rent from 30 June 2022 through to -1 August 2022)
 - $\$12,629.00 - \$285.45 = \$12,343.55$ total rent charged

Decision

18. The landlords' claim for rent succeeds in the amount of **\$1,867.43**.

Issue 2: Vacant Possession

Landlord's Position

19. The landlord issued a termination notice to the tenant on 16 May 2022 under section 19 of the Act with an identified move out date of 03 June 2022. This notice was issued by registered mail and regular mail (L#5). A review of the tracking number provided indicates that this mail was never picked up by the tenant. However, according to subsection 35(5) of the *Act*, notices served by registered mail are it shall be "considered to have been served on the fifth day after mailing".
20. The landlord testified that the tenant was in arrears in the amount of \$\$3,408.88 on the day the termination notice was issued. 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

21. 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.

22. I accept the landlord's claim and evidence that the tenant has not paid their rent as required. According to her records, the tenant was in arrears in the amount of \$3408.88 on the day the termination notice was issued.
23. 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

24. The landlord's claim for an order for vacant possession of the rented premises succeeds.
25. 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

26. The landlord claimed \$20.00 for the expense of applying for the hearing (L#6).
27. As the landlords' claim has been successful, the tenant shall pay this hearing expense.

Summary Decision

28. The landlord is entitled to the following:

- A payment of \$1,887.43, determined as follows:

a) Rent Owing.....	\$1,867.43
b) Hearing Expenses.....	\$20.00
c) Total.....	<u>\$1,887.43</u>
- An order for vacant possession of the rented premises.
- A payment of a daily rate of rent in the amount of \$8.65, as originally ordered 09 August 2018 and continuing from 30 June 2022 onwards until 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.

30 June 2022

Date

[Redacted]

Jaclyn Casler
Residential Tenancies Tribunal