

Residential Tenancies Tribunal

Applications: 2022 No. 0422 NL

Decision 22-0422-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:47 PM on 31 May 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", participated 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 (L#1) confirming that the tenants were served, by email, of the claims against them. Proof of email service was provided (L#2).
6. The details of the claim were presented as a fixed term agreement, signed 1 December 2021 and expiring 31 May 2022. Monthly rent was set at \$2,150.00 and a security deposit in the amount of \$1,612.50 was collected. A copy of the written rental agreement was provided (L#3).
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 \$2,150.00;
 - Payment of Late Fees in the amount of \$39.00;
 - An order to use the security deposit of \$1,612.50 against monies owed; 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 14, 15 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

11. Tenant2 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*.
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 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.
13. The landlord submitted an affidavit and proof of email service to both tenant1 and tenant2 on 20 May 2022 (L#2). Tenant1 joined the hearing after a courtesy call was placed to her. However, tenant2 could not be contacted.
14. Furthermore, testimony was received from both tenant1 and the landlord that tenant2 vacated the rental premises in February 2022. According to tenant1, tenant2 left the province but is back now and living in St John's. She provided what she believes to be a current mailing address for tenant2.
15. According to the landlord, tenant2 spoke with him at a later date and indicated that he broke up with tenant1 and left the province. However, no formal documentation was provided to the landlord at the time tenant2 vacated the rental premises and so the landlord included tenant2 on the application so that he could be "paid rent". The landlord provided a copy of emails between himself and tenant1, where tenant1 asks why tenant2 was included, to which he responded "both of your names are on the lease" (L#4).

16. As tenant1 joined the call, I proceeded with the hearing in absence of tenant2 because he was properly served and any further delay in these proceedings would unfairly disadvantage the landlord.
17. The landlord testified that he is now seeking damage claims from the tenant. He acknowledged that the current hearing is for rent, late fees, and security deposit, not damages. He also acknowledged that he needed to submit a second application in order to seek damages from tenant1 and tenant2.
18. The landlord amended his 19 May 2022 application to:
 - Increase the amount of late fees requested, asking that they be calculated to the day of the hearing; and
 - Remove the request for vacant possession because tenant1 vacated the rental premises on 26 May 2022 and the landlord had a friend post a notice of abandonment to the rental premises on that day.

Issue 1: Payment of Rent (\$2,125.00)
Landlord's Position

19. The rental premises is a single family dwelling located at [REDACTED]. The landlord testified that he issued an initial termination notice to the tenants under section 18 of the *Act*, on 27 February 2022 with a stated move out date of 31 May 2022 (see last page in L#3). The landlord testified that he issued this notice in response to a police raid on the rental property that resulted in a broken exterior door, illegal items found on the property and a person arrested.
20. The landlord stated that he issued this Termination Notice because he no longer wanted to rent the property and wanted to sell as he resides in [REDACTED].
21. The landlord provided a copy of the rental ledger showing rent monies received from December 2021 through April 2022 (L#5). The landlord further testified that he has retained records of all e-transfers received for rent, as paid by tenant1.
22. According to this rent ledger, tenant1 and tenant2 owe \$2,150 for the month of May 2022 and that he has been charging appropriate late fees as allowed by section 15 of the *Act*.
23. The landlord testified that he gave tenant1 one week to deal with a personal "emergency" at the start of May 2022 and pull together the rent. He issued the termination notice, on 7 May 2022 under section 19 of the *Act* (L#6) when she continued to not pay rent. This notice was delivered electronically by email, with a stated move out date of 18 May 2022.

Tenant's Position

24. Tenant1 testified that she knows she owes the landlord rent for May 2022 and that she intends to pay the landlord what she owes him. However, she found it "hard to deal" when she received the section 19 Termination Notice on 7 May 2022. Tenant1 testified that she was planning on leaving at the end of the month (May 2022) anyways since the "lease was up".
25. Tenant1 testified that she finds the landlord hard to deal with.
26. Tenant1 testified that she knows and accepts that she owes the landlord at least \$500-600 in rent, once the security deposit is applied to the monies owing.
27. Tenant1 testified that the landlord sent her an invoice in February 2022 for payment to fix the door broken by the police raid. She stated that the landlord was looking for monies in the amount of \$669.43 (T#1) and that she e-transferred him \$1,000 in response (T#4). Tenant1 requested that the difference in amount requested and the amount paid (e.g., \$330.57) be used as a credit towards the rent money she owes the landlord.
28. The landlord testified that he would prefer to see the monetary difference in the amount of money he requested, and the amount of money paid by the tenant, be applied to damages at the rental premises. I provided leave to the landlord to submit a final invoice related to replacing the door at the rental premises, but no final invoice was provided.
29. Consequently, I note in the email shared by tenant1 regarding the door replacement costs, the landlord writes (T#1):

"This does not include other items that may be needed at time of install including weather stripping, door sweep, etc so the final bill will likely be a bit higher and confirmed after installation is complete".

As such, I do not expect that the landlord retained a significant amount of money following the install of the replaced door. Furthermore, had tenant1 been concerned about her overpayment, I would have expected her to reach out to the landlord sooner and formally request for instance, that any surplus monies be applied to March 2022 rent.

Analysis:

30. I accept the landlord's claim and evidence that tenant1 did not pay rent for the month of May 2022. Because the landlord also issued a section 19 termination notice to the tenant, with a stated move out date of 18 May 2022, I find that the landlord is entitled to payment of rent to the date the premises were vacated only.

31. As indicated in the testimony provided by tenant1 and the landlord, tenant1 vacated the rental premises on 26 May 2022. I therefore calculate the total arrears owing as at 26 May 2022 to be \$1,837.68. This amount was arrived at through the following calculations:

- $\$2,15.00 \times 12 = \$25,800/365 = \$70.68 \text{ per day}$
- $\$70.68 \times 26 = \$1,837.68$

Decision

32. The landlords' claim for rent succeeds in the amount of \$1,837.68.

Issue 2: Payment of Late Fees (\$63.00)

Relevant Submission

33. The landlord originally assessed late fees in the amount of \$39.00 when he submitted his application on 19 May 2022.

34. The landlord asked to increase the amount of late fees assessed to the day of the hearing 31 May 2022.

Analysis

35. 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.

36. 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.***

37. As the tenant has been arrears since at least 2 May 2022, the landlord is entitled to a maximum payment of \$63.00 (\$5.00 for 2 May 2022 and \$2.00 for every day hereafter May 3 – May 31 = 29 days = 29 x 2 = \$58.00).

Decision

38. The landlord's claim for late fees succeed in the amount of \$63.00.

Issue 3: Security Deposit \$1612.50

Relevant Submissions

39. Evidence of a \$1,612.50 security deposit having been collected on 5 December 2022 is contained within the rental agreement (L#1) and proof of the e-transfer received from tenant1 was also provided (L#7).

Analysis

40. 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.

41. According to the landlord's records, a security deposit in the \$1,612.50 was collected on 5 December 2022. The landlord is seeking to use the full amount of the security deposit against rent monies owing.

42. As the amount owing to the landlord 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

43. As the landlord's monetary claim has been successful, he shall retain the full security deposit to be used against money owing.

Issue 4: Hearing Expenses

Relevant submissions

44. The landlord submitted a claim for hearing expenses in the amount of \$56.75 (L#8).

45. He claimed \$20.00 for the expense of applying for the hearing (L#8).

46. He claimed \$36.75 for the cost having a notary sign his affidavit of service (I#9).

47. As the landlord's claim has been successful, the tenants shall pay these hearing expense.

Summary Decision

48. The landlord is entitled to the following:

- An order for use of the full amount (\$1612.50) of the security deposit collected;
- A payment of \$344.93, determined as follows:

a) Rent Owing.....	\$1,837.68
b) Late Fees	\$63.00
c) Hearing Expenses.....	\$56.75
d) Less - Security Deposit.....\$1612.50	
e) Total	<u>\$344.93</u>
- 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.

06 June 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal