

Residential Tenancies Tribunal

Application 2022 No. 0440 NL

Decision 22-0440-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:49PM on 07 July 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 properly served of the claim against him.
5. The details of the claim were presented as a verbal month-to-month agreement with rent set at \$1,500.00 per month since 01 March 2022. A security deposit in the amount of \$750.00 was acknowledged by both parties as having been collected in cash on the evening of 27 May 2022.
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. In these proceedings the standard of proof 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 \$2,250.00; and
 - Vacant possession of the rental premises;

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*.
9. Also relevant and considered in this case is sections 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

10. The landlord amended his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$3,500.00.

Issue 1: Payment of Rent

Landlord's Position

11. The rental premises is a single family dwelling with a garage located at [REDACTED].
12. The landlord testified that he did not submit a rental ledger to this tribunal and appeared uncertain about the amount of rent that was owing. He was however consistent in his testimony that of the five months the tenant has resided in his rental premises, only two months rent has been received and that he is owed three months rent.

Tenant's Position

13. The tenant testified that he has paid three months rent (March, April and May) and stated that he has not paid for June or July rent because he was served the termination notice at the end of May 2022 and knew that he had a hearing coming up with this Tribunal.
14. The tenant testified that he paid rent by making a direct deposit at the bank into the landlords account but that he had no receipts for any of these transactions.
15. The tenant agreed that it was reasonable for the landlord to submit a copy of the deposit history of the bank account to which the tenant pays his rent. I gave leave to the landlord to submit this document after the hearing, and he did (L#2). A review of this document indicates that a \$1,500.00 payment was received prior to 01 March 2022 and that a \$1,500.00 payment was received 29 April 2022. No other deposits were recorded to that bank account.

Analysis

16. I accept the landlord's claim and evidence that the tenant has not paid his rent as required and that the tenant has paid for only two of the five months that he has been residing at the rental premises.
17. Regarding the actual amount of money owed to the landlord, both parties agreed that monthly rent was \$1,500.00 and so I find that the tenant owes the landlord \$3,000.00 as at 30 June 2022 (e.g., \$1,500.00 for May 2022 and \$1,500.00 for June 2022).
18. Because the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing (07 July 2022) and a per diem thereafter.
19. I therefore calculate the total arrears owing as at 07 July 2022 to be \$3,345.24. This amount was arrived at through the following calculations:
 - $\$1,500.00 \times 12 = \$1,800/365 = \$49.32$ per day
 $\$49.32 \times 07 = \345.24 for July 1 - 7, 2022
 - $\$3,000.00 + \$345.24 = \$3,345.24$ for total possible rental arrears

Decision

20. The landlords' claim for rent succeeds in the amount of \$3,345.24.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

21. Both parties were informed during the hearing that my decision as adjudicator would depend on receipt of the bank deposit history that I gave leave for the landlord to submit after the hearing. Neither party requested to make subsequent comments upon my receipt of this document.

Landlord's Position

22. The landlord submitted a copy of a termination notice issued on 26 May 2022 with an effective date of 06 June 2022 (L#3). The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*.
23. The landlord testified that the termination notice was served by text on the day it was issued, and that a paper copy of the notice was also provided to the tenant on 27 May 2022 when the landlord served the tenant with notice of his application for dispute resolution.

24. The landlord testified that the tenant owed him \$1,500.00 for rent for the month of May 2022 and also still owed him a security deposit when he served the termination notice. Both parties agreed that the \$750.00 security deposit was paid in cash on the day that the tenant was served notice of the dispute application.
25. The landlord is seeking an order for vacant possession of the rented premises.

Tenant's Position

26. The tenant stated that he received the termination notice by text as noted by the landlord. He also testified that he has not paid any rent since he was served because he knew that he had a hearing coming up.

Analysis

27. 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.

28. According to the landlords' records, on 26 May 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$1,500.00. Where both parties acknowledged that a \$750.00 payment was received the following day, they agreed that this money was a security deposit and that it was not for any rent monies owing at that time.
29. 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


30. The landlords' claim for an order for vacant possession of the rented premises succeeds.
31. 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 of Decision

32. The landlord is entitled to the following:
- A payment of \$3,345.24 for rent owing.
 - An order for vacant possession of the rented premises.
 - A payment of a daily rate of rent in the amount of \$49.32, beginning 07 July 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.

08 July 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal