

## Residential Tenancies Tribunal

Applications: 2022 No. 0454 NL

Decision 22-0454-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 2:00PM on 06 July 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", did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served, by registered mail, of the claim against her. A review of the tracking number associated with this mail indicates that the information package was not picked up, however, subsection 42(6) of the *Residential Tenancies Act* considers items sent by registered mail to have been served "on the fifth day after mailing".
5. The details of the claim were presented as an originally fixed term agreement, signed 01 February 2020 with monthly rent set at \$770.00 per month. A security deposit in the amount of \$337.50 was collected and proof of receipt was provided (L#2). A copy of the most recent rental agreement was also provided confirming the current agreement is month-to-month (L#3).
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 \$297.50;
  - Payment of Late Fees in the amount of \$75.00;
  - An order to use the security deposit of \$337.50 against monies owed; 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 14, 15 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

## **Preliminary Matters**

10. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. 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 she has been properly served.
12. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
13. The landlord stated that she has received rent in the full amount from the Government on behalf of the tenant for the months of June and July 2022.

### **Issue 1: Payment of Rent (\$297.50)**

14. The rental premises is an apartment building located at [REDACTED] [REDACTED] The tenant resides in unit # [REDACTED].
15. The landlord provided a copy of the rental ledger dated 25 May 2022 showing a balance of \$297.50. According to these records, rent is paid for by the Department of AESL on the tenant's behalf and the tenant last had a zero dollar

balance in January 2022. Her monthly rent was then increased in February 2022 and her monthly rental subsidy no longer covered her monthly rent.

16. The landlord testified that she has received rent in the full amount of \$770.00 from the government on behalf of the tenant for the months of June and July 2022. The landlord testified that current balance of rental arrears is \$297.50, as at the day of the hearing.

### **Analysis**

17. I accept the landlord's claim and evidence that the tenant has rental arrears in the amount of \$297.50 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 she is entitled to payment of rent to the date of the hearing and a per diem thereafter.
18. The first step towards calculating the landlord's entitlement for rent to the day of the hearing, is to identify the rental per diem based on a monthly rent of \$770.00:
  - $\$770.00 \times 12 = \$9,240.00 / 365 = \$25.32$  per day
19. Because the hearing occurred on 06 July 2022, the landlord is entitled the rental arrears owing as of 30 June 2022 (\$297.50) and \$151.92 for rent to 06 July 2022, the day of the hearing:
  - $\$25.32 \times 6 = \$151.92$  for rent for July 1 - 6, 2022
20. Regarding actual money owed to the landlord, the landlord testified that rent has been reliably paid on the tenant's behalf by government and these payments now account for the full amount of monthly rent. However there was a period of time when these payments did not account for monthly rent and so the stated arrears accumulated. Because the landlord testified that rent has been received on behalf of the tenant for July 2022, I find that her entitlement for rent must be subtracted from the \$770.00 for rent that has been received on the tenant's behalf.
  - $\$770.00 - \$151.92 = \$618.08$ cr Total possible rental credit for July 2022
21. Then, in order to account for previous arrears, this amount must also be subtracted from the total possible rental credit as follows:
  - $\$618.08 - \$297.50$  (arrears) = \$320.58cr Final rent credit

### **Decision**

22. The tenant has credit for rent in the amount of 320.58cr as at the start of the hearing that was called at 2:00pm on 06 July 2022.

23. For each day beginning 07 July 2022 that the tenant remains in possession of the rental premises, the landlord shall charge a daily rate of rent (per diem) in the amount of \$25.32 against the credit for rent as noted.

## **Issue 2: Payment of Late Fees (\$75.00)**

### **Relevant Submission**

24. The landlord has requested late fees in the full amount of \$75.00.

### **Analysis**

25. 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.***

26. 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.***

27. As the tenant has been arrears since at least 2 February 2022 (as shown on the rental ledger), the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

### **Decision**

28. The landlords' claim for late fees succeed in the amount of \$75.00.

## Issue 3: Vacant Possession

### Relevant Submissions

29. The landlord issued a termination notice to the tenant on 11 May 2022 under section 19 of the Act (L#3). This notice was hand delivered to the tenant on the day after it was issued (12 May 2022). The stated move out date was identified as 24 May 2022.
30. The landlord testified that the tenant was in arrears in the amount of \$297.50 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 her rental arrears and has not vacated the rental premises as required.

### Analysis

31. 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.*

32. I accept the landlord's claim and evidence that the tenant did not initially keep her funders up to date on the shortfall in rent when it was increased effective February 2022. According to the landlord's records, the tenant was in arrears in the amount of approximately \$297.50 on the day the termination notice was issued.

33. 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**

34. The landlord's claim for an order for vacant possession of the rented premises succeeds.
35. 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: Security Deposit \$337.50**

### **Relevant Submissions**

36. Evidence was provided of a \$337.50 security deposit having been collected prior to 01 February 2020 when the tenant took occupancy of the rental unit (L#2). The landlord testified that the date on this receipt incorrectly reads 03 November 2020 as a result of a system software update.

## **Analysis**

37. 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.*

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(12) *A landlord who does not make an application in accordance with subsection*

*(11) shall return the security deposit to the tenant.*

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(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.*

38. According to the landlords' records, a security deposit in the \$337.50 was collected and the landlord is seeking to use the full amount of the security deposit against rent monies owing. As however the tenant currently has a credit of 320.58cr on his account from which a per-diem for rent is to be removed until the landlord regains possession of the rental unit, I find that the landlord is not currently entitled to retain any amount of the security deposit.

### **Decision**

39. The landlord's claim to retain the full amount of the tenant's security deposit does not succeed.

### **Issue 4: Hearing Expenses**

#### **Relevant submissions**

40. The landlord claimed \$20.00 for the expense of applying for the hearing and \$14.90 for the expense of registered mail when providing the tenant with notice of the hearing (L#6).
41. As the landlords' claim has been successful, the tenant shall pay this combined hearing expense of \$34.90.

### **Summary Decision**

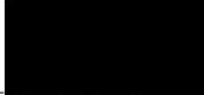
42. The landlord is entitled to the following:

- A payment of a daily rate of rent from the tenant in the amount of \$25.32, 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.
- The tenant has a rent credit for the period ending 06 July 2022 in the amount of \$210.68, determined as follows:

- a) Rent Credit.....\$320.58cr
- b) LESS: Late Fees ..... (\$75.00)
- c) LESS: Hearing Expenses..... (\$34.90)
- d) Total Credit .....\$210.68

08 July 2022

Date

  
Jaclyn Casler  
Residential Tenancies Tribunal