

Residential Tenancies Tribunal

Application 2022 No. 0487 NL

Decision 22-0487-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:56PM on 20 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 “tenant1”, participated in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as “tenant2”, participated in the hearing.
5. Two affidavits of services were provided, confirming that both tenant1 (L#1) and tenant2 (L#2) were served personally of the claims against them. This service occurred at a public Canada Day event.
6. The details of the claim were presented as a month-to-month agreement with rent set at \$600.00 per month since 11 February 2021. The landlord testified that he agreed to collected rent as biweekly payments of \$300.00 each month. A security deposit in the amount of \$300.00 was collected and 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. 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

8. The landlord is seeking the following:
 - Payment of rent in the amount of \$2,400.00;
 - Payment of late fees in the amount of \$75.00;
 - Vacant possession of the rental premises; and
 - An order to use the security deposit in the amount of \$300.00 against monies owing.

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*.
10. Also relevant and considered in this case is sections 14, 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

11. The landlord testified that the tenants vacated the rental premises on 16 July 2022 and so he is seeking rent to that date. He testified that the tenants did not return the key but that he does not believe the tenants will return as he understands they have a new rental premises. Tenant2 testified that she still has the key to the rental premises because she and tenant1 have not had an opportunity to drop the key off to the landlord.
12. The landlord amended his claim for rent owing to \$2,700.00.

Issue 1: Payment of Rent (\$2,700.00)

Landlord's Position

13. The rental unit is an apartment located at [REDACTED]. The tenants resided in apartment number [REDACTED].
14. The landlord testified that the tenants paid their rent until February 2022 and that he received no rent from them since March 2022. He testified that he is entitled to rent from March 2022 through to 16 July 2022, the day the tenant's vacated the rental unit. The landlord submitted a copy of his rent ledger confirming that no rent has been paid since rent was last paid in February 2022.
15. The landlord testified that he responded to the tenants' complaint about water on the ceiling in February 2021 and provided them with a dehumidifier. He testified that he believed this had resolved the issue. He testified that he was never provided notice of concern with mice.

Tenant's Position

16. Tenant2 testified that they have not paid rent from March 2022 onwards because they have been experiencing financial hard times. She also testified that rent has not been paid because she and tenant1 have experienced water damage through the ceiling of their rental unit that damaged their bedroom and living room furniture. Tenant2 also testified that there were mice in the rental unit and that when she informed the landlord of these issues, he "laughed them off".
17. Tenant1 testified that landlord did not respond to issues brought to his attention and that he does not maintain his rental property. Tenant1 also testified that he really disliked being served notice of the hearing at the Canada Day event and that he found it upsetting how the landlord just put the documents in his arms.
18. Tenant1 also asked who would be compensating him for his new \$2000.00 bedroom set that he had to buy as a result of damage experienced in the rental premises.

Analysis:

19. I accept the landlord's claim and tenant2's acknowledgement that they have not paid rent since March 2022. Because both parties also agreed that the rental premises was vacated on 16 July 2022, I find that the landlord is entitled to rent in the amount of \$2,715.68.
20. These amounts were arrived at through the following calculations:
 - $\$600.00 \times 12 = \$7,200.00 / 365 = \$19.73 \text{ per day}$
 $\$19.73 \times 16 = \$315.68 \text{ for July 1 - 16, 2022}$
 - $\$600 \text{ (March)} + \$600 \text{ (April)} + \$600 \text{ (May)} + \$600 \text{ (June)} = \$2,400.00$
 - $\$2,400.00 + \$315.68 = \$2,715.68$

Decision

21. The landlord's claim for rent succeeds in the amount of \$2,715.68.

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

Relevant Submission

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

Analysis

23. 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.

24. 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.***

25. As the tenants have been arrears since at least 2 March 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Issue 3: Security Deposit

Relevant Submissions

26. Evidence of a \$300.00 security deposit having been collected was provided by the landlord in the rental agreement (L#3) and the rental ledger (L#4).

Analysis

27. 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.

28. Where the landlord's claim for compensation has succeeded in an amount that exceeds the value of the security deposit collected, he is entitled to retain the full amount of the security deposit for use against monies owing.

Decision

29. The landlord's application to retain the tenants' security deposit succeeds in the amount of \$300.00.

Summary of Decision

30. The landlord is entitled to the following:

- To retain the full amount of the \$300.00 security deposit collected.
- A payment of \$2,415.68, determined as follows:
 - a) Rent Owing..... \$2,715.68
 - b) Less security deposit.....(\$300.00)
 - c) Total.....\$2,415.68

21 July 2022
Date

Jaclyn Casler
Residential Tenancies Tribunal