

Residential Tenancies Tribunal

Application 2022 No. 0489 NL

Decision 22-0489-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:47 PM on 02 August 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], 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 electronically of the claim against him. The landlord testified that he knew to serve electronically because this was the email provided by the tenant for communications. Proof of electronic service was also provided (L#2).
5. The details of the claim were presented as a month-to-month an agreement operating since October 2020, within rent set at \$1,400.00 all inclusive. A security deposit in the amount of \$700.00 was collected.
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 payment of rent in the amount of \$2,800.00.

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 14 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

10. The tenant 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*.
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 he 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 his absence.

Issue 1: Payment of Rent (\$2,800.00)

Relevant Submissions

13. The rental premises is an apartment building located at [REDACTED]. The tenant resided within unit [REDACTED].
14. The landlord submitted a copy of his rental ledger and invoice prepared for the tenant (L#3). He testified that the tenant owed \$800.00 for rent in October 2021 and all of November 2021 (\$1,400.00) and December 2021 (\$1,400.00). This totalled \$3,600.00. The landlord explained, as written on the ledger, that he is only seeking compensation for rent in the amount of \$2,800 because the tenant sold him a bed valued at \$300.00 and the landlord applied a \$500.00 credit for the remaining of the security deposit.
15. The landlord testified that the tenant agreed in writing that the landlord could keep the "damage deposit against what's owed" (see page 2 in L#4) and that the other \$200.00 of the security deposit was applied against painting required in the rental premises after the tenant vacated (see page 4 in L#4).
16. The landlord testified that the tenant messaged him on 06 December 2021 to inform that he would be vacating by the end of the month. The landlord testified

that he is not seeking compensation for rent for January 2022 because the tenant had spoken well and made various promises to pay back rent while he was still a tenant. The landlord also testified that he has not heard back from the tenant since 04 February 2022 when he wrote "*You can expect regular payments to start on the 19th*" (see page 5 in L#4) but has not made a single payment.

Analysis

17. I accept that the landlord's testimony and evidence that rent is owing. As shown in the landlord's ledger and invoice (see page 2), I accept that total rent owing at 31 December 2021 was \$3600.00 against which the landlord applied an \$800 credit as discussed in paragraph 14, resulting in final arrears of \$2,800.00.
18. Furthermore, because the landlord provided evidence of the tenant's acceptance of him retaining the \$700.00 security deposit against monies owed, I find that the landlord has satisfied the requirement of 14(1)(a) of the Act by providing evidence of his written agreement with the tenant. This clause reads as follows:

Security Deposit

(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;*

19. I also accept the landlord's evidence that the tenant documented his acceptance of the amount of rent owing to the landlord when he wrote on 04 February 2022 that "*You can expect regular payments to start on the 19th*". However, as the landlord testified, the tenant did not make any payments towards the arrears. As such, I find that the landlord's claim for rent succeeds in the amount specified.

Decision

20. The landlord's claim for rent succeeds in the amount of **\$2,800.00**.

04 August 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal