

Residential Tenancies Tribunal

Application 2022 No. 0491 NL

Decision 22-0491-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:16AM on 25 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”, did not participate 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 month-to month agreement with rent set at \$475.00 per month since 01 May 2022. A security deposit in the amount of \$355.00 was collected. A copy of the written rental agreement was not provided.
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 \$475.00;
 - Vacant possession of the rental premises; and
 - An order for the security deposit to be retained in the amount of \$355.00.

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 them by telephone because no number was available. 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 they have 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.
13. The landlord amended his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$930.00.

Issue 1: Payment of Rent (\$930.00)

Landlord's Position

14. The rental premises is shared living accommodation located at [REDACTED]. The tenant resides in room [REDACTED]. The landlord testified that he provides housing to individuals leaving homeless shelters to give them a fresh start.
15. The landlord submitted a copy of his rental ledger (L#2). He testified that he received an \$850.00 payment in May 2022 and that this payment covered the security deposit (\$355.00) and May rent (\$475.00). The landlord testified that he applied the remaining \$20.00 to rent owing for June 2022, leaving arrears of \$455.00 as at 30 June 2022. The landlord testified that he has not received any payment since the May payment was received.

Analysis

16. I accept the landlord's claim and evidence that the tenant has not paid his rent as required. Regarding the actual amount of money owed to the landlord, I agree that the tenant owed the landlord \$455.00 as at 30 June 2022 (e.g., \$475.00-\$20.00).
17. As 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 (25 July 2022) and a per diem thereafter.
18. I therefore calculate the total arrears owing as at 25 July 2022 to be \$845.50. This amount was arrived at through the following calculations:
 - $\$475.00 \times 12 = \$5,700.00 / 365 = \$15.62$ per day
 - $\$15.62 \times 25 = \390.50 for July 1 - 25, 2022
 - $\$455.00 + \$390.50 = \$845.50$ for total possible rental arrears

Decision

19. The landlord's claim for rent succeeds in the amount of \$845.50.

Issue 2: Vacant Possession of Rented Premises Relevant Submissions

20. The landlord submitted a copy of a termination notice issued on 07 June 2022 with an effective date of 18 June 2022 with their application (L#3). The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*. The landlord testified that the termination notice was served in person by knocking on the tenant's door on the day the notice was issued.
21. According to the landlord's records, the tenant owed \$455.00 in rent on the day the termination notice was issued. The landlord is seeking an order for vacant possession of the rented premises.

Analysis

22. 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.

23. According to the landlord's records, on 07 June 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$455.00.

24. 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

25. The landlords' claim for an order for vacant possession of the rented premises succeeds.

26. 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 # 3: Security Deposit (\$355.00) Relevant Submissions

27. Evidence of a \$355.00 security deposit having been collected was provided by the landlord in the rental ledger (L#2).

Analysis

28. 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.

29. Where the landlord's claim for payment of rent has exceeded the \$355.00 value of the security deposit collected, he is entitled to retain the full amount.

Decision

30. The landlord's claim for retaining the tenant's security deposit succeeds in the full amount of \$355.00.

Issue 4: Hearing Expenses

31. The landlord claimed \$20.00 for the expense of applying for the hearing.
32. As his claim has been successful, the tenants shall pay this hearing expense.


Summary of Decision

33. The landlord is entitled to the following:
- An order for vacant possession of the rented premises.
 - An order to retain the security deposit in the full amount of \$355.00.
 - An order for payment of \$510.50, determined as follows:
 - a) Rent Owing..... \$845.50
 - b) Hearing expenses.....\$20.00
 - c) Less security deposit.....(\$355.00)

d) Total.....\$510.50

- An order for payment of a daily rate of rent in the amount of \$15.62, beginning 26 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.

25 July 2022
Date


Jaclyn Casler
Residential Tenancies Tribunal