

Residential Tenancies Tribunal

Applications: 2022 No. 0492 NL

Decision 22-0492-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:11AM on 19 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 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 picked up on 05 July 2022 confirming good service (L# 2).
5. The details of the claim were presented as an agreement, signed 24 April 2022, with rent originally set at \$1,350.00 a month and then reduced to \$1,300.00 effective May 2022, the first month and only month for which rent was collected. A security deposit in the amount of \$650.00 was paid in cash and receipted by the landlord. A copy of a barely readable, poorly scanned, rental agreement was provided (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 \$1300.00;
 - Payment of Late Fees in the amount of \$50.00; 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 15 and 19 of the *Act*.

Preliminary Matters

10. The landlord amended his claim for rent to \$2,600.00 and requested permission for collecting the maximum amount of late fees (e.g., \$75.00).
11. The rental premises is a single family dwelling located at [REDACTED] [REDACTED]. The tenant has rights to the main floor and the landlord retains access rights to the basement of the house.
12. The tenant is responsible for utility payments and it was revealed during the hearing that the house has a single utility meter. This means that the tenant is required to pay for utilities used by the landlord when he resides in the basement of the rental premises.
13. The tenant and landlord have what sounds to be a complicated history of police involvement from both sides. I informed both parties that this hearing related to matters of rent and payment of rent only and so I would not be collecting evidence related to police interactions.

Issue 1: Payment of Rent (\$2,600.00)

Landlord's Position

14. The landlord testified that the tenant paid her security deposit and rent for May in cash and that receipts were provided. The landlord testified that no rent has been received for June or July 2022. The landlord also testified that he uses minimal utilities when he resides in the basement of rental unit. He also testified that he has not inappropriately accessed the tenant's rental unit and that he only accessed the unit after notice was provided.

Tenant's Position

15. The tenant testified that she has not paid rent because she does not feel safe in her rental unit as a result of the actions of the landlord. She stated that when she signed the rental agreement, the landlord indicated he may be at the basement unit of the rental premises maybe 3 or 4 times a year. However, the tenant testified that the landlord has been at the rental premises at least 16 days since she has been there, and that is with her being home only every other week.
16. The tenant testified that she has the money to pay rent and that she intends to pay rent. She testified that she has not paid rent because she takes issue with having to also pay the landlord's utility costs. The tenant testified that she is currently out of the country and wants to pay rent, however, she can only pay rent by e-transfer which the landlord cannot accept.

Analysis:

17. I accept the landlord's claim and the tenant's acknowledgement that she has not paid rent for June 2022 or for July 2022. Because the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to payment of rent to the date of the hearing and a per diem thereafter.
18. Because the hearing occurred on 19 July 2022, the landlord is entitled to rent in the amount of \$2,112.06 and a rental per diem of \$42.74 for each day that the tenant remains in possession of the rental premises from 20 July 2022 onwards.
19. These amounts were arrived at through the following calculations:
 - $\$1300.00 \times 12 = \$1,560.00 / 365 = \$42.74 \text{ per day}$
 $\$42.74 \times 19 = \$812.06 \text{ for July 1 - 19, 2022}$
 - $\$812.06 + 1300.00 = \$2,112.06$

Decision

20. The landlord's claim for rent succeeds in the amount of \$2,112.06.
21. For each day beginning 20 July 2022 that the tenant remains in possession of the rental premises, the landlord is entitled to a daily payment of rent (per diem) in the amount of \$42.74.

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 tenant has been arrears since at least 2 June 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

26. The landlord's claim for late fees succeed in the amount of \$75.00.

Issue 3: Vacant Possession

Landlord's Position

27. The landlord issued a termination notice to the tenant on 13 June 2022 under section 19 of the Act (L#4). This notice was texted to the tenant on the day it was issued (12 May 2022). The stated move out date was identified as 24 June 2022.

28. The landlord testified that the tenant was in arrears in the amount of \$1300.00 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 their rental arrears and has not vacated the rental premises as required.

Tenant's Position

29. The tenant acknowledged that she received the termination notice on the day that it was issued. She stated that she is looking for a new place to live, but with the rental market being what it is, this is taking some time.

Analysis

30. 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.

31. I accept the landlord's claim and the tenant's acknowledgement that she has not paid rent for June 2022 or July 2022 and that she did not make any rent payments after the termination notice was issued. 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

32. The landlord's claim for an order for vacant possession of the rented premises succeeds.

33. 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: Hearing Expenses
Relevant submissions

34. The landlord claimed \$20.00 for the expense of applying for the hearing and \$13.44 for the expense of sending registered mail to the tenant (see page 2 on L#1).

35. As the landlord's claim has been successful, the tenant shall pay this combined hearing expense of \$33.44.

Summary Decision

36. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- A payment of \$2,220.50, determined as follows:

a)	Rent.....	\$2,112.06
b)	Late Fees.....	\$75.00
c)	Hearing Expenses.....	\$33.44
d)	Total.....	\$2,220.50
- A payment of a daily rate of rent from the tenant in the amount of \$42.74, beginning 20 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.

20 July 2022
Date


Jaclyn Casler
Residential Tenancies Tribunal