

Residential Tenancies Tribunal

Application 2022 No. 0507 NL

Decision 22-0507-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:23PM on 08 August 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 properly served of the claim against her.
5. The details of the claim were presented as a longstanding rental agreement, operating since 2013. The current agreement month-to month agreement with all inclusive rent set at \$940.00 per month. A security deposit in the amount of \$573.75.00 was collected and a copy of the original written rental agreement was provided (L#2).
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 \$1,880.00; and
 - Vacant possession of the rental premises.

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 section 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 her 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 her absence.
13. Due to a delay in the official start time of this hearing, I informed the landlord that this hearing would need to be reconvened if a review of teleconference hearing logs indicated that the tenant had called in at the originally scheduled start time of 1:45PM. I can confirm that hearing logs were subsequently reviewed and no evidence of such a call was located. As such, a decision has been rendered.
14. The landlord amended his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$3,760.00.

Issue 1: Payment of Rent (\$3,760.00)

Landlord's Position

15. The rental premises is an apartment building located at [REDACTED] [REDACTED] It is a [REDACTED] unit building and the tenant resides in unit [REDACTED]. The landlord testified that the tenant is a [REDACTED] year old woman and that he has tried every avenue to get support for her because his firm is worried that she can no longer care for herself. The landlord requested that I delay providing my response so as to allow his firm one final opportunity to secure appropriate supports.
16. The landlord submitted a copy of his rental ledger (L#3). He testified that the tenant regularly falls behind in rent and was previously issued a termination notice in March 2022 due to arrears of \$4,700.00. The landlord testified that the tenant brought her account to zero on 27 April 2022 and has not paid any rent since that time. The landlord testified that he is owed for four months rent at \$940.00 (e.g., \$3,760.00).

Analysis

17. I accept the landlord's claim and evidence that the tenant has not paid her rent as required on a monthly basis. Regarding the actual amount of money owed to the landlord, I agree that the tenant owed the landlord \$2,820.00 as at 31 July 2022 (e.g., May, June and July at \$940.00 a month x 3).
18. 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 (8 August 2022) and a per diem thereafter.
19. I therefore calculate the total arrears owing as at 8 August 2022 to be \$3,067.20. This amount was arrived at through the following calculations:
 - $\$940.00 \times 12 = \$11,280.00 / 365 = \$30.90 \text{ per day}$
 $\$30.90 \times 8 = \$247.20 \text{ for August 1 - 8, 2022}$
 - $\$2,820.00 + \$247.20 = \$3,067.20 \text{ for total possible rental arrears}$

Decision

20. The landlord's claim for rent succeeds in the amount of \$3,067.20

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

21. The landlord submitted a copy of a termination notice issued on 18 May 2022 with an effective date of 29 May 2022 with their application (see page 2 in L#4).

The notice was not a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018* but it was served in accordance with the Act. The landlord testified that the termination notice was served in person on the day the notice was issued.

22. According to the landlord's records, the tenant owed \$940.00 in rent on the day the termination notice was issued. The landlord is seeking an order for vacant possession of the rented premises because no payment of rent has been made since the termination notice was issued.

Analysis

23. 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.

24. According to the landlord's records, on 18 May 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$940.00.
25. 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

26. The landlords' claim for an order for vacant possession of the rented premises succeeds.
27. 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.

Summary of Decision

28. The landlord is entitled to the following:
 - An order for vacant possession of the rented premises.
 - An order for payment of rent in the amount of \$3,067.20.
 - An order for payment of a daily rate of rent in the amount of \$30.90, beginning 09 August 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.

10 August 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal