

Residential Tenancies Tribunal

Application 2022 No. 0562 NL

Decision 22-0562-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 17 August 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "landlord1", participated in the hearing. His sister, [REDACTED], also participated in the hearing. The landlord testified that [REDACTED] is his Business Manager
3. The respondent, [REDACTED], hereinafter referred to as "tenant1", did not participate in the hearing. Tenant1's son, [REDACTED], hereinafter referred to as "tenant2" participated in the hearing on behalf of his mother, "tenant1" and his boyfriend, [REDACTED], who is hereinafter referred to as "tenant3".
4. The landlord submitted an affidavit of service confirming that the tenant1 was served by Registered Mail of the landlord's claim against her (L#1). Proof of tracking was provided and indicates that the respondents' package was picked up. Tenant2 confirmed service.
5. The details of the claim were presented as an intended month-to-month agreement with rent set at \$1,200.00 with utilities to be paid separately by the tenants. The tenants were to also pay a \$500.00 security deposit. The landlord testified that he has received no money from the tenants.
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 \$5,250.00; 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 landlord amended the amount of rent owing to \$4,800.00.

Issue 1: Payment of Rent (\$4.800.00)

Landlord's Position

11. The landlord testified that the rental premises is a two bedroom single family dwelling located at [REDACTED]. He testified that he signed an "*intent to rent*" with tenant1 so that she could get funding from a homeless shelter for payment of the first month's rent in the amount of \$1,200.00 along with payment of the \$500.00 security deposit. The landlord testified that he agreed to rent to tenant1 because she said she had a pension which would pay for rent in the subsequent months.
12. The landlord's business manager testified that the landlord was then requested to sign similar letters of intent with tenant2 and tenant3 so that they could also get funding for rent. The landlord testified that tenant2 and tenant3 were to only reside in the rental premises temporarily.
13. The landlord testified that the three tenants then improperly took occupancy of the rental premises sometime between May 5 and May 10 2022. The landlord testified that this shocked him because he only expected the tenants to take occupancy AFTER they provided proof of funding received from homeless shelter. The landlord testified that they tenants were able to take occupancy because he had left a key outside of the rental premises.
14. The landlord testified that he was contacted on 19 May 2022 by homeless shelter who apologized for a delay in providing the required first month's rent and security deposit. The landlord testified that he informed the homeless shelter of what he believed to be a scam being perpetrated by the three tenants and that this led to him not accepting any money from the shelter on their behalf.
15. The landlord testified that he believed he was owed four months rent at \$1,200.00 a month for a total of \$4800.00 because the tenants have been residing at his rental premises since May 2022 and have not paid him any rent during this time. The landlord testified that the tenants have also not paid a security deposit, which was to be \$500.00.

Tenants' Position

16. Tenant2 testified that he and the other tenants took occupancy of the rental premises on 10 May 2022 and that they did so using the key that had been provided when they viewed the rental premises. Tenant2 agreed that no monies have been paid to the landlord for rent and that monthly rent was set at \$1,200.00 separate from utilities.

Tenant2 testified that the landlord rejected rent and a security deposit from the homeless shelter and that the landlord frequently comes around the rental premises.

Analysis

17. I accept that the landlord and tenant2 agree rent has not been paid since the three tenants took occupancy of the rental premises on 10 May 2022. Regarding the landlord's entitlement to rent, I accept that the landlord and tenant2 agree that monthly rent was set at \$1,200.00.
18. Because the tenants took occupancy of the rental premises on 10 May 2022, I have determined that the following monthly rent cycles have occurred:
 - 10 May 2022 – 09 June 2022 = \$1,200.00
 - 10 June 2022 – 09 July 2022 = \$1,200.00
 - 10 July 2022 – 09 August 2022 = \$1,200.00
19. Consequently, I find that the tenants owe the landlord \$3,600.00 in rent as at 09 August 2022 and because the landlord is seeking an order of vacant possession, I calculate that he is owed **\$3,915.60** to the date of the hearing and a per diem of **\$39.45** for each day that the tenants retains possession of the rental unit from 18 August 2022 onwards. These amounts were arrived at through the following calculations:

$$\begin{aligned} \$1,200.00 \times 12 &= \$14,400.00 / 365 = \$39.45 \text{ per day} \\ \$39.45 \times 8 &= \$315.60 \text{ for August 10-17, 2022 rent} \\ \$315.60 + \$3,600.00 &= \$3,915.60 \end{aligned}$$

Decision

20. The landlord's claim for rent succeeds in the amount of **\$3,915.60**.

Issue 2: Order of Vacant Possession

Landlord's Position

21. The landlord submitted a copy of a termination notice issued on 23 June 2022 with an effective date of 5 July 2022 with his application (L#2). 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 to the rental premises and taped to door on the day it was issued with proof of service provided (L#2).
22. According to the landlord's records, the tenant owed \$2,400.00 on the day the notice was issued. The landlord is seeking an order for vacant possession of the rented premises because the tenants have not paid any rent at all, since they took occupancy of the rental premises on 10 May 2022.

Tenants' Position

23. Tenant2 acknowledged receiving the termination notice issued on 24 June 2022. He testified that he has been trying to find a new place to live since he moved into the rental premises, but that it is hard to find a new place to live.

Analysis

24. 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.

25. According to the landlord's records, on 24 June 2022, the day the termination notice was issued, the tenants were in arrears in the amount of \$2,400.00. 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 landlord's 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.

Issue # 3 – Hearing Expenses

28. The landlord claimed the costs of applying for the \$20.00 application fee along with the costs of \$13.44 for sending the respondent documentation by registered mail.

29. As his claim for rent and vacant possession have been successful, the tenants shall pay the landlord's hearing expenses in the amount of \$33.44 (e.g., \$20.00 + \$13.44).

Summary of Decision

30. The landlord is entitled to the following:

- A payment of \$3,949.04, determined as follows:
 - a) Rent Owing..... \$3,915.60
 - b) Hearing Expenses.....\$33.44
 - c) Total.....\$3,949.04
- A payment of a daily rate of rent in the amount of **\$39.45** per day beginning 18 August 2022 and continuing to the date the landlord obtains possession of the rental unit.
- An order for vacant possession of the rental unit.
- Payment from the tenant for any expenses 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.

18 August 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal