

## Residential Tenancies Tribunal

Application 2022 No. 0573 NL

Decision 22-0573-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 11:16AM on 02 August 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 served personally of the claim against him.
5. The details of the claim were presented as a month-to-month agreement continuing since July 2019. Rent was set at \$1,300.00 exclusive of utilities and a security deposit in the amount of \$1,300.00 was collected. A copy of the written rental agreement was provided (L#2). The landlord testified that the tenant has also been renting the garage on the property since November 2021 for an additional \$500.00 a month.
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 \$3,600.00;
  - Validity of Termination Determined/Premises Vacated; and
  - An order for the security deposit to be retained in the amount of \$1,300.00.

## **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 because the number was out of service. 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.

### **Issue 1: Payment of Rent (\$3,600.00)**

#### **Landlord's Position**

13. The rental premises is a single family home located at [REDACTED]. The landlord testified that she originally did not provide access to the garage because it contained the landlords' possession. However, a subsequent agreement was established between the landlord and tenant effective November 2021 where he began paying an increased amount of monthly rent (\$1,800.00 instead of \$1,300.00) for use of the house and garage.
14. The landlord submitted a copy of her rental ledger for the house (L#3) and the garage (L#4). She testified that she received all payments required up until May 2022 and that she has received no rent for either the house or the garage for the months of June (\$1,800.00), July (\$1,800.00) or August (\$1,800.00).

#### **Analysis**

15. I accept the landlord's claim and evidence that the tenant has not paid his rent as required since rent was last paid for May 2022. Regarding the actual amount of money owed to the landlord, I recognize that rent, according to the rental agreement, was \$1,300.00 a month for the house and then it became \$1,800.00 a month after the tenant began paying for access to the garage as well from November 2021 onwards. I consider this increase in monthly rent to be an increase inline with 16(7) of the *Act* which states (emphasis added):

*Rental Increase*

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*(7) Notwithstanding subsection (1), where the landlord and tenant agree in writing, a landlord may increase the amount of rent payable by a tenant for the residential premises without notice under subsection (3) where the increase is due to the provision of a service, **facility**, privilege or benefit, including a parking space, that was not previously provided under the rental agreement.*

16. Though the landlord provided no specific evidence of a written amendment to the original lease, I accept her testimony and rental ledgers provided as proof that monthly rent has been \$1,800.00 since November 2022. I also accept that rent has not been received for June, July or August 2022, as is shown in the landlord's ledger.
17. Because the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing (02 August 2022) and a per diem thereafter.
18. Where the landlord provided proof of a \$1,300.00 security deposit having been collected, I note that, as per 14(1)(b) of the *Act*, this is in excess of the maximum of  $\frac{3}{4}$  of the amount of rent payable for the first month (e.g., \$975.00). In accordance with 14(2) of the *Act*, this difference of \$325.00 will be considered a credit against rent monies being claimed (e.g., \$1,300-\$975).
19. I therefore calculate the total arrears owing as at 02 August 2022 to be **\$3,393.36**. This amount was arrived at through the following calculations:
  - $\$1800.00 \times 12 = \$21,600.00 / 365 = \$59.18$  per day  
 $\$59.18 \times 2 = \$118.36$  for August 1 - 2, 2022
  - $\$1,800.00$  (June) +  $\$1,800.00$  (July) +  $\$118.36$  (August) =  $\$3,718.36$
  - $\$3,718.36 - \$325.00$  (SD Overpayment) = **\$3,393.36**

**Decision**

20. The landlord's claim for rent succeeds in the amount of \$3,393.36

**Issue 2: Vacant Possession of Rented Premises**

**Relevant Submissions**

21. The landlord submitted a copy of a termination notice issued on 01 July 2022 with an effective date of 15 July 2022 with their application (L#5). The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*. According to a written summary document provided by the landlord, this notice was served by text on 03 July 2022 and served to the door on 04 July 2022, with proof service provided (L#6). Where the notice is signed and dated 01 July 2022 by the landlord, she testified that this was because she had to sign it before providing to a family member to serve.
22. The landlord testified that the tenant was in arrears in the amount of \$3,600.00 when he was served notice of termination. The landlord testified that she has observed the tenant's vehicles still at the rental premises, but that she is not sure if he is still at there. The landlord is seeking an order for vacant possession of the rented premises.

## 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, the tenant was in arrears in the amount of \$3,600.00 when he was served electronically on 03 July 2022 and physical copy of the notice was also served to his door on 04 July 2022.
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 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: Security Deposit**

### **Relevant Submissions**

28. The landlord testified that she wished to discontinue her claim against the security deposit collected because she wished to retain those monies to apply against any damages found within the interior of the rental premises.

### **Analysis**

29. As noted in paragraph 18, the full value of rent, \$1,300.00 "Security deposit" was collected contrary to the legislation, and so the excess \$325 has been applied against rent monies owing. This has left the landlord with a security deposit of \$975.00.
30. Regarding the landlord's request to withdraw her claim on these monies, such a request is also contrary to the legislation, because, as noted in the Definition section of the *Act*, a:
- (I) *"security deposit" means money or other value paid, or required to be paid under a rental agreement, by a tenant to a landlord to be held as security for*
- (i) *the performance of an obligation, or*
- (ii) *a liability of the tenant;*
31. Consequently, where the landlord has successfully established that the tenant owes her \$3,393.36 in rent, the \$975.00 security deposit held by the landlord, will be applied against this liability of the tenant. According to section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018*:
- (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.*

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- (12) *A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.*

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- (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.*

32. Where the landlord's claim for payment of rent has exceeded the \$975.00 value of the security deposit collected, she is entitled to retain the full amount.

## **Decision**

33. The landlord's claim for retaining the tenant's security deposit succeeds in the full amount of \$975.00.

### **Issue 4: Hearing Expenses**

34. The landlord claimed \$20.00 for the expense of applying for the hearing.

35. As her claim has been successful, the tenant shall pay this hearing expense.

### **Summary of Decision**

36. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- An order to retain the full amount of the remaining \$975.00 security deposit.
- An order for payment of \$2,438.36, determined as follows:
  - a) Rent Owing.....\$3,393.36
  - b) Hearing expenses.....\$20.00
  - c) **Less Security Deposit .....****\$975.00**
  - d) Total.....**\$2,438.36**
- An order for payment of a daily rate of rent in the amount of \$59.18, beginning 03 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.

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03 August 2022

Date

Jaclyn Casler  
Residential Tenancies Tribunal

