

Residential Tenancies Tribunal

Application 2022 No. 0585 NL

Decision 22-0585-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:15 AM on 16 August 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “tenant1”, participated in the hearing on behalf of his wife, hereinafter referred to as “tenant2”.
4. Two affidavits of service was provided confirming that the tenants were served electronically on 29 July 2022 (L#1) and then served in person by the landlord on 31 July 2022 (L#2). Tenant1 confirmed receipt of service.
5. The details of the claim were presented as a fixed term agreement that started on 01 October 2022 and is set to expire at 31 August 2022. Monthly rent is set at \$1,700.00 exclusive of utilities and a security deposit in the amount of \$1,275.00 was collected. A copy of the written 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. 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 \$4,557.00;
 - Payment of late fees in the amount of \$75.00; 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 sections 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

10. The landlord testified that he made a previous application (2022-0433-NL) to this tribunal for vacant possession and it was found that the notice of termination issued to the tenants on 11 May 2022 was not valid. As such, the landlord's claim for vacant possession did not succeed, causing the landlord to issue a new notice of termination and make a subsequent application to this tribunal.
11. The landlord amended the amount of rent owing to \$6,305.00.

Issue 1: Payment of Rent (\$6,305.00)

Landlord's Position

12. The landlord testified that the rental premises is a single family dwelling located at [REDACTED]. The tenants occupy the main floor apartment with their two children.
13. The landlord submitted a copy of his rent ledger (L#3) and reviewed its entirety to demonstrate how \$6,305.00 is currently owing in rent through to 31 August 2022. The landlord explained how this amount includes \$75.00 in late fees as well as a subsequent payment of \$120.00 that was received on 21 July 2022. The landlord testified that the tenants last had a zero dollar balance in April 2022.

Tenants' Position

14. Tenant1 agreed with the contents of the landlord's rental ledger and agreed that he and his wife, tenant2 owe the landlord \$6,305.00 in rent. Tenant1 testified that he has not been paying rent as required because of business and personal problems that they communicated to the landlord.

Analysis

15. I accept that the landlord and tenant¹ agree that \$6,305.00 is owing in rent through to 31 August 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 (16 August 2022) and a per diem thereafter until the key is returned.
16. A review of the rent ledger submitted, and the table provided below indicates that the landlord was owed \$4,427.00 as at 31 July 2022.

	Rent	Paid
Oct-21	\$1,700.00	\$1,700.00
Nov-21	\$1,700.00	\$1,700.00
Dec-21	\$1,700.00	\$1,700.00
Jan-22	\$1,700.00	\$1,700.00
Feb-22	\$1,700.00	\$1,700.00
Mar-22	\$1,700.00	\$1,700.00
Apr-22	\$1,700.00	\$1,700.00
May-22	\$1,700.00	\$250.00
Jun-22	\$1,700.00	\$100.00
Jul-22	<u>\$1,700.00</u>	<u>\$323.00</u>
Total	\$17,000.00	\$12,573.00
	=	\$4,427.00

17. Regarding the landlord's total entitlement to rent to the day of the hearing, I calculate that he is owed **\$5,321.24** to the date of the hearing and a per diem of **\$55.89** for each day that the tenants retains possession of the rental unit from 17 August 2022 onwards. These amounts were arrived at through the following calculations:

$$\begin{aligned} \$1700.00 \times 12 &= \$20,400.00 / 365 = \$55.89 \text{ per day} \\ \$55.89 \times 16 &= \$894.24 \text{ for August 1 - 16, 2022} \\ \$894.24 + \$4,427.00 &= \$5,321.24 \end{aligned}$$

Decision

18. The landlord's claim for rent succeeds in the amount of **\$5,321.24**.

Issue 2: Late Fees (\$75.00)

Relevant Submission

19. The landlord has requested late fees in the full amount of \$75.00.

Analysis

20. 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.*

21. 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.

22. As the tenants have been arrears since at least 02 May 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Issue 3: Order of Vacant Possession

Landlord's Position

23. The landlord submitted a copy of a termination notice issued on 13 July with an effective date of 25 July 2022 with his application (L#5). 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#6). The landlord testified that he also served the notice electronically to the tenants on the day it was issued, with proof of electronic service provided (L#7).
24. According to the landlord's records, the tenant owed \$4,735.00 on the day the notice was issued. The landlord is seeking an order for vacant possession of the rented premises because the tenants have only paid \$223.00 to these arrears since the July notice of Termination was issued and August 22 rent was not paid.

Tenants' Position

25. Tenant1 testified that he has received so many notices from the landlord that he does not necessary recall receiving the termination notice that was issued on 13 July 2022.

Analysis

26. 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.

27. According to the landlord's records, on 13 July 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$4735.00. 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

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

29. 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

30. The landlord is entitled to the following:

- A payment of \$5,396.24, determined as follows:
 - a) Rent Owing..... \$5,321.24
 - b) Late Fees.....\$75.00
 - c) Total.....\$5,396.24
- A payment of a daily rate of rent in the amount of \$55.89 per day beginning 17 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.

16 August 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal