

Residential Tenancies Tribunal

Application 2022-No.602 -NL

Decision 22-0602-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:14 a.m. on 11-August-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 he has been properly served. The landlord submitted an affidavit (LL#01) with her application stating that she had served the tenant with notice of the hearing, in person on 31-July-2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. The landlord amended her application to include security deposit applied to monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$850.00
 - Security deposit applied against monies owed \$425.00
 - Vacant possession of rental premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 18: Notice of termination of rental agreement and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$850.00

Relevant Submissions

9. The landlord said she has a verbal rental agreement with the tenant. The tenant moved in just before 01-September-2021. They have a monthly agreement; the tenant pays \$850.00 a month. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$425.00 on 08-August-2021 and she is still in possession of the deposit.
10. The landlord said that the tenant was typically on time when it came to his rent payments and he often paid in advance. She said she gave him a 3 month termination notice the end of June 2022 and the tenant stopped paying rent. She said that he didn't pay rent for July and on 20-July-2022 another individual paid the tenant's rent. She said that the individual didn't wish for the tenant to know that the rent was paid or who had made the payment. The landlord said that they did it out of consideration for the landlord.
11. The landlord said she had initially applied for rent for July, but she has been compensated for that rent, however, it is now August, and once again she hasn't received a rent payment from the tenant.
12. The landlord is seeking August rent totaling \$850.00

Analysis

13. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay August rent.
14. This board doesn't consider future rent, therefore the tenant shall pay the landlord the rent owed up to the date of the hearing totaling \$307.45. This is calculated as follows:

$\$850.00 \times 12 \text{ months} = \$10,200.00 \text{ per year.}$
 $\$10,200 \text{ divided by } 365 \text{ days} = \27.95 a day.
 $\$27.95 \times 11 \text{ days} = \$307.45.$

Decision

15. The landlord's claim for rent succeeds in the amount of \$307.45.

Issue 2: Vacant Possession of the Rental Premises

Relevant Submissions

16. The landlord submitted two termination notices (LL#02 & LL#03). The first is a Section 18: Notice of termination of rental agreement and the second is a Section 19: Notice where failure to pay rent.

Section 18: Notice of termination of rental agreement

17. The landlord submitted a termination notice she gave to the tenant. It is on a Landlord's notice to terminate – standard. The notice is signed and dated for 30-Jun-2022 with a termination date of 30-September-2022. The landlord said that on 30-June-2022 she went to the tenant's apartment, she knocked on the door but no one answered. She said she then posted the termination notice on the window in the tenant's door.

Section 19: Notice where failure to pay rent

18. The landlord stated, paragraph 10, that after she gave the tenant a termination notice he stopped paying rent. When the tenant stopped paying rent she said she also gave the tenant another termination notice, it is on a "landlord's notice to terminate early – cause" form for failure to pay rent. The notice is signed and dated for 07-July-2022, with a termination date of 18-July-2022.
19. The landlord said that she went to the apartment again and he didn't answer the door, she said she posted this notice on the window in his door on 07-July-2022.
20. The landlord is seeking an order of vacant possession.

Analysis

21. In consideration of the first notice I will refer to Section 18 of the *Residential Tenancies Act, 2018*:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

.....

(9) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) be given not later than the first day of a rental period;

(c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(d) be served in accordance with section 35.

22. The termination notice submitted by the landlord (LL#02) does give the tenant 3 months' notice and was served in accordance with Section 35. This notice meets the requirements of the Act and is a valid notice.

23. In consideration of the second notice, the landlord has shown, paragraph 15 that the tenant stopped paying rent after he was served with the first notice. The landlord then gave a notice under Section 19, of the *Residential Tenancies Act, 2018*, which 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.*

.....

(4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

.....

24. The tenant was in rent arrears in excess of the 5 days when the notice was served. Although someone paid his rent for July they did so on the 20th, however on the date of termination 18-July-2022, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.
25. The termination notice for cause has an earlier termination date of 18-July-2022 and tenant should have vacated the property at that time.

Decision

26. The landlord's claim for an order for vacant possession succeeds.
27. The tenant shall vacate the premises immediately.
28. The tenant shall pay to the landlords 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.
29. The tenant shall pay a daily rate for rent beginning 12-August-2022 of \$27.95, as per paragraph 14, until such time as the landlord regains possession of the property.

Issue 3: Security deposit applied against monies owed \$425.00

Relevant Submissions

30. The landlord stated in paragraph 09 that the tenant paid a security deposit of \$425.00 on 08-August-2021 and she is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

31. The landlord's claim for loss has been successful, paragraph 15, it is determined that the tenant shall pay to the landlord \$307.45 for rent owed up to and including the day of the hearing. Therefore, she shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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

Decision

32. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$307.45.

Summary of Decision


33. The tenant shall:
- Pay a daily rate of rent beginning 12-August-2022 of \$27.95, until such time as the landlord regains possession of the property.
 - Vacate the property immediately
 - Pay to the landlords 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.

The landlord

- Will be awarded an Order of Possession.
- Shall retain \$307.45 of the security deposit for rent owed, as follows:
 - Rent \$307.45
 - Security deposit applied (425.00)
 - Total..... \$(117.55)

August 15, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office