

Residential Tenancies Tribunal

Applications: 2022 No. 0708 NL

Decision 22-0708-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:16AM on 22 September 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 served by registered mail of the claim against him on 18 August 2022. A review of the tracking number indicated that this mail was not picked up and was ultimately returned to the landlord. As however, 35(5) of the *Residential Tenancies Act* considers items sent by registered mail, served on the fifth day after mailing, this is considered good service by the landlord.
5. The details of the claim were presented as a month-to-month agreement operating since November 2020. Monthly rent is set at \$860.00 exclusive of utilities, and a security deposit in the amount of \$425.00 was collected. No copy of the written rental agreement was provided.
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. The standard of proof, in these proceedings, 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 \$100.00;
 - Payment of Late Fees in the amount of \$75.00; and
 - An order for vacant possession.

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* (the *Act*).
9. Also relevant and considered in this case is section 15 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. 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 their absence.
13. The landlord amended the amount of rent owing down to \$110.00.

Issue 1: Payment of Rent (\$110.00)

Landlord's Position

14. The rental premises is an apartment building located at [REDACTED] [REDACTED]. The tenant resides in unit # [REDACTED].
15. The landlord provided a copy of the rental ledger dated 22 September 2022 showing a balance of \$110.00. (L#2). According to these records, the tenant had arrears in the amount of \$90.00 when he was issued a section 19 Termination Notice under the *Act*.

16. The landlord testified that the tenant's arrears began accumulating after his monthly rent was increased in November 2021 from \$850.00 per month to \$860.00 per month. Because the vast percentage of the tenant's rent (+\$10.00) is paid for by AES, the tenant regularly has significant positive and negative balances on his account as rent comes due at the first of every month and then the monthly subsidies are received by the landlord.
17. The landlord testified that she sends out monthly notices of arrears so the tenant should be aware of his arrears. She spoke further of how it is the responsibility of tenants to notify their support workers when rent is increased, so that the tenant's subsidy can be similarly increased.

Analysis

18. I accept the landlord's testimony and evidence that arrears have been accumulating on the tenant's account in increments of \$10.00 ever since the tenant's rent was increased by that amount in November 2021. Regarding entitlement to rent as of 30 August 2022, I accept the landlord's testimony and evidence that she was owed \$100.00.
19. Because the landlord is also seeking an order of vacant possession, I find that she is entitled to payment of rent up to the day of the hearing, and a per diem for every day thereafter that the tenant retains possession of the unit. All calculations are provided below:

$\$860.00 \times 12 = \$10,320.00 / 365 = \$28.27 \text{ per diem}$
 $\$28.27 \times 22 = \$621.94 \text{ for rent September 1 – September 2022}$
 $\$850.00 = \text{AES subsidy received for the month of September 2022}$
 $\$850.00 - \$621.94 = \$228.06 \text{ Total possible rental credit as of 22 September}$
 $\$228.06 - \$110.00 \text{ (current arrears)} = \$118.06 \text{ Final total rental credit}$

20. These sums together provide the tenant with a window of time through which to vacate the rental premises without having to pay arrears, so long as he vacates prior to the rental credit being used up (according to the daily per-diem calculation).

Decision

21. The landlords' claim for rent does not succeed at this time due to the current credit for rent on the tenant's account.

Issue 2: Payment of Late Fees (\$75.00)

Landlord's Position

22. The landlord has assessed late fees in the amount of \$75.00 in response to the rental arrears that have accumulated since the tenant fell into arrears in November 2021 as a result of his rental subsidies no longer covering his rent.

Analysis

23. 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.

24. 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.***

25. The landlord testified that rental arrears have been accumulating in the tenant's name since at least November 2021 when the tenant's monthly rent was increased and his monthly rental subsidy no longer covered the full amount of rent.

26. However, I note when reviewing the tenant's rental ledger, that he last had a negative balance on 30 June 2022 as a result of the early receipt of the July 2022 subsidy by the landlord. As such, late fees can only be calculated from 02 July 2022 onwards and because the hearing occurred on 22 September 2022, I find that the landlord is entitled to receive maximum late fees.

Decision

27. The landlord's claim for late fees succeed in the amount of \$75.00.

Issue 3: Vacant Possession

Relevant Submissions

28. The landlord issued a termination notice to the tenant on 28 July 2022 under section 19 of the Act (L#3). This notice was hand delivered by the resident property manager to the tenant on the day it was issued. The stated move out date was identified as 09 August 2022 and according to the landlord's records, the tenant was in arrears in the amount of \$90.00 when the notice was issued, and he remains in arrears to this day.

29. The landlord is seeking an order for vacant possession of the rental premises because the tenant has not paid their rental arrears and has not vacated the rental premises as required.

Analysis

30. 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.

31. I accept the landlord's claim and evidence that the tenant has not paid their rent as required. According to his records, the tenant was in arrears in the amount of 90.00 on the day the termination notice was issued.

32. 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

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

34. 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 4: Hearing Expenses
Relevant submissions

35. The landlord claimed \$20.00 for the expense of applying for the hearing.
36. As the landlord's claim has been successful, the tenant shall pay this hearing expense.

Summary Decision

37. The landlord is entitled to the following:

- An order for vacant possession of the rented premises,
- As the tenant has a rent credit for the period ending 22 September 2022, in the amount of \$23.06, determined as follows:
 - a) Rent Credit.....\$118.06
 - b) Less: Late Fees.....\$75.00
 - c) Less: Hearing Expenses\$20.00
 - d) Total\$23.06

A payment of a daily rate of rent in the amount of \$28.27, beginning 23 September 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.

26 September 2022
Date

[Redacted]
Jaclyn Casler
Residential Tenancies Tribunal