

Residential Tenancies Tribunal

Application 2022 No. 0711 NL

Decision 22-0711-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:16AM on 20 September 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 by express post of the claim against him. A receipt for this service was also provided, and a review of the associated tracking number confirmed that the mail was sent on 25 August and signed for by the tenant on 29 August 2022 (L#2).
5. The details of the claim were presented as a longstanding month-to-month rental agreement, operating since approximately summer 2019. Current rent is set at \$625.00 and a security deposit was not collected. A copy of a rental agreement signed by the landlord on 01 September 2020 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 \$1875.00; 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 tenant was not present or represented at the hearing and I was unable to reach them 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 his absence.
13. The landlord amended her application at the hearing and stated that she is now seeking a total claim of rent in the amount of \$1,400.00.

Issue 1: Payment of Rent (\$1,400.00)

Landlord's Position

14. The rental premises is an 11 unit apartment building located at [REDACTED]. The tenant resides in unit [REDACTED]. The landlord submitted a written summary of rent payments received in 2022 (L#5) and testified that she is currently owed \$1,400.00 for rent through to 30 September 2022 as a result of recent payments received from the tenant, the last of which was received on 30

August 2022. The landlord testified that the tenant pays rent in cash, and that he tends to pay late and in partial payments throughout the months.

Analysis

15. I accept the landlord's claim and evidence that the tenant has not paid his rent as required on a monthly basis. Regarding the actual amount of money owed to the landlord, I find that the landlord was owed \$775.00 as at 30 August 2022.
16. As the landlord is also seeking an order for vacant possession of the rental premises, I find that she is entitled to a payment of rent to the date of the hearing (20 September 2022) and a per diem from 21 September 2022 onwards.
17. I therefore calculate the total arrears owing as at 20 September 2022 to be \$1,186.00. This amount was arrived at through the following calculations:
 - $\$625.00 \times 12 = \$7,500.00 / 365 = \$20.55$ per day
 - $\$20.55 \times 20 = \411.00 for September 1 - 20, 2022
 - $\$775.00 + \$411.00 = \$1,186.00$ for total possible rental arrears

Decision

18. The landlord's claim for rent succeeds in the amount of \$1,186.00.

Issue 2: Vacant Possession of Rented Premises Relevant Submissions

19. The landlord submitted a copy of a termination notice issued on 21 July 2022 with an effective date of 01 August 2022 with their 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 by her husband on the day it was issued, and it was either left in the tenant's mailbox or provided in person.
20. According to the landlord's records, the tenant owed \$1,650.00 in rent on the day the termination notice was issued. The landlord is seeking an order for vacant possession of the rented premises because arrears remain on the tenant's account.

Analysis

21. 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.

22. According to the landlord's records, on 21 July 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$1,650.00.
23. 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

24. The landlords' claim for an order for vacant possession of the rented premises succeeds.
25. 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

26. The landlord claimed the \$20.00 expense of applying for this application along with the \$25.76 expense of serving the tenant by Express post (the individual charges for which are visible on L#2).
27. As the landlord's claim has been successful, the tenant shall pay the hearing expense of \$45.76 (e.g., \$20.00 + \$25.76).


Summary of Decision

28. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- An order for payment in the amount of \$1,231.76, determined as follows:
 - a) Rent Owing.....\$1,186.00
 - b) Hearing Expenses.....\$45.76
 - c) Total.....\$1,231.76
- An order for payment of a daily rate of rent in the amount of \$20.55, beginning 21 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.

22 September 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal