

Residential Tenancies Tribunal

Application 2022 No. 0712 NL

Decision 22-0712-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:15AM on 27 September 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. Her husband, [REDACTED] also participated.
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 her. A receipt for this service was also provided, and a review of the associated tracking number confirmed that the mail was sent on 26 August and signed for by the tenant on 06 September 2022 (L#2).
5. The details of the claim were presented as a longstanding rental agreement, operating since November 2017. Current rent is set at \$800.00 a month and a security deposit in the amount \$300.00 was collected. A copy of a rental agreement signed by the landlord on 01 September 2020 was provided L#3). The landlord testified that she reduces rent by \$100.00 a month, down to \$700.00, in exchange for the tenant providing cleaning services at the rental premises.
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 \$2075.00; 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. I did however make contact with the tenant's boyfriend, [REDACTED], who hung up on me when I asked if he also lived in the rental premises. 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. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
12. The landlord amended her application at the hearing and stated that she is now seeking a total claim of rent in the amount of \$1,675.00. The landlord also testified that the tenant's boyfriend has been residing in the rental premises for approximately 3 years, but that she did not serve the boyfriend with notice of dispute because the tenant is the only registered tenant at the rental premises.

Issue 1: Payment of Rent (\$1,675.00)

Relevant Submissions

13. The rental premises is an 11 unit apartment building located at [REDACTED] [REDACTED]. The tenant resides in unit [REDACTED]. The landlord submitted a written summary of rent payments received in 2022 (L#3) and reviewed them. She testified that she continues to credit \$100.00 a month to the tenant's account even though she is receiving complaints from other tenants in the rental premises

about cleaning not occurring, and that she also credited the tenant's account \$200.00 in June for work that had been done by the tenant's boyfriend.

14. The landlord testified that she is currently owed \$1,6750.00 for rent through to 30 September 2022 as a result of a \$300.00 payment received on 26 September 2022. She explained that rent was \$625.00 a month until April 2022 when it increased to \$800.00 a month after notice of the rental increase was issued on 01 October 2021(L#5).

Analysis

15. I accept the landlord's claim and evidence that the tenant has not paid her rent as required on a monthly basis. Regarding the actual amount of money owed to the landlord, I created the table below to clearly depict the landlord's rental ledger for monies owed each month, against monies received. Because the landlord testified that she credits the tenant's account \$100.00 each month for cleaning, and that she further credited the tenant's account an addition \$200.00 in June, I have created the column of "effective rent" to properly depict monies owed against monies received.

	Effective Rent	Paid
Jan 22	\$525.00	\$525.00
Feb 22	\$525.00	\$270.00
		\$255.00
Mar 22	\$525.00	\$525.00
Apr 22	\$700.00	\$400.00
		\$200.00
		\$100.00
May 22	\$700.00	\$200.00
June 22	\$500.00	\$200.00
		\$25.00
		\$300.00
July 22	\$700.00	\$300.00
Aug 22	\$700.00	\$300.00
		<u>\$125.00</u>
Total	\$4,875.00	-
		\$3,725.00
		=
		\$1,150.00

16. Accordingly, I find that the landlord was owed \$1,150.00 in rent as at 30 August 2022. Because 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 (27 September 2022) and a per diem from 28 September 2022 onwards.
17. I therefore calculate the total arrears owing as at 27 September 2022 to be \$1,471.27. This amount was arrived at through the following calculations:

- $\$700.00 \times 12 = \$8,400.00/365 = \$23.01$ per day
 $\$23.01 \times 27 = \621.27 for September 1 - 27, 2022
- $\$621.27 - \300.00 for payment received 26 Sept 2022 = $\$321.27$
- $\$321.27 + \$1,150.00 = \$1,471.27$

Decision

18. The landlord's claim for rent succeeds in the amount of \$1,471.27.
19. The landlord is entitled to payment of a daily rate of rent in the amount of \$23.01, beginning 28 September 2022 and continuing to the date the landlord obtains possession of the rental unit.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

20. 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#6). 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 to the tenant's mailbox.
21. According to the landlord's records, the tenant owed \$875.00 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

22. 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.

23. 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 \$875.00.
24. 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

25. The landlord's claim for an order for vacant possession of the rented premises succeeds.
26. 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

27. The landlord claimed the \$20.00 expense of applying for this application along with the \$22.32 expense of serving the tenant by Express post (the individual charges for which are visible on L#2).
28. As the landlord's claim has been successful, the tenant shall pay the hearing expense of \$42.32 (e.g., \$20.00 + \$22.32).

Summary of Decision

29. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- An order for payment in the amount of \$1,513.59, determined as follows:
 - a) Rent Owing.....\$1,471.27
 - b) Hearing Expenses.....\$42.32
 - c) Total.....\$1,513.59
- An order for payment of a daily rate of rent in the amount of \$23.01, beginning 28 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.

28 September 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal