

Residential Tenancies Tribunal

Applications: 2022 No. 0726 NL

Decision 22-0726-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:02AM on 05 October 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 “the tenant”, also participated in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by email of the claim against her on 21 September 2022, and because proof of email service was not provided, I requested at the hearing that it be provided, and it was promptly submitted by the landlord (L#2).
5. The details of the claim were presented as an originally fixed term agreement that has been operating since May 2020. It is currently month-to-month with rent set at \$1,100.00 and a security deposit in the amount of \$700.00 was collected. The landlord provided a copy of the written rental agreement (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. 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:
 - An order for payment of rent in the amount of \$2,200.00; 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 18 of the *Act*.

Preliminary Matters

10. The rental premises is what appears a single family dwelling, located at ■■■■■■■■■■ that has been converted into three apartment units. The tenant occupies the main floor apartment.
11. The landlord is the property manager for the owner of the rental premises.

Issue 1: Payment of Rent (\$2,200.00)

Landlord's Position

12. The landlord submitted a copy of his payment receipts for the tenant and testified that he recently received a full rent payment from the tenant in addition to what is represented on the form dated 03 August 2022 (L#3). The landlord testified that he is seeking payment of rent for the month of August 2022 and September 2022 and that he was not initially seeking payment of rent for October because the tenant had stated she would be vacating. As however, the tenant remains in the rental premises, the landlord testified that he would like to be paid for the time that she occupies the unit.

Tenant's Position

13. The tenant testified that she knows she owes rent for the month of September 2022 and that she is "not the type" who does not pay rent.

Analysis

14. I accept the landlord's claim and evidence that the tenant has not recently paid her rent as required on a monthly basis. I also accept that the tenant agrees that there is some rent owing. Regarding the actual amount of money owed to the landlord, I accept the landlord's evidence showing that 7 payments of \$1,100.00 have been received against 10 months of rent being charged.

15. As such, I find that the landlord is owed \$2,200.00 as at 30 September 2022 and because the landlord is also seeking an order of Vacant possession, that he is additionally entitled to payment of rent in the amount of \$180.80 for October 2022 through to the day of the hearing, as well as a per diem in the amount of \$36.16 for each day that the tenant retains possession of the rental unit from 06 October 2022 onwards.

$$\begin{aligned} \$1,100.00 \times 12 &= \$13,200.00 / 365 = \$36.16 \\ \$36.16 \times 5 &= \$180.80 \text{ for October 1 – 5 2022} \end{aligned}$$

Decision

16. The landlord's claim for rent succeeds in the amount of \$2,380.80 (e.g., \$2,200.00 + \$180.80)
17. The landlord is entitled to payment of a daily rate of rent in the amount of \$36.16, beginning 06 October 2022 and continuing to the date the landlord obtains possession of the rental unit.

Issue 2: Vacant Possession

Landlord's Position

18. The landlord provided a copy of the termination notice issued on 27 May 2022 (L#4). The notice was issued under "section 18(2)(b)" of the *Act* and identified a stated move out date of 31 August 2022. The notice was served by email on the day it was issued.
19. The landlord is seeking an order for vacant possession of the rented premises.
20. The landlord was asked to follow up on statements made by the tenant regarding her concerns with mold in the rental premises, as well as her concerns for the general state of the rental premises. He testified that his company responds to maintenance requests based on written requests from tenants, using the maintenance requests forms available on their website, and that he has yet to receive such a request from the tenant. The landlord further testified that his company has nevertheless attended to the rental premises on multiple occasions in response to the tenant's concerns and that these efforts are not always successful because the tenant has refused access at times. The landlord testified that the termination notice is completely unrelated to the maintenance requests and that it was issued because the homeowner asked that the notice be issued.

Tenant's Position

21. The tenant testified that she received the notice of termination while she was in Alberta recovering from surgery. She expressed concern with representatives of the landlord attending to her rental premises prior to the notice being issued and how they allegedly attended at an earlier time than that indicated. The tenant also expressed concerns with how this matter was brought to a hearing, stating

that she normally deals with a different representative of the landlord, stated that she is sick because of mold in the rental premises, stated that the ceiling is falling down in one of the bedrooms in the rental premises, and communicated that she will be approaching the media.

Analysis

22. Section 18 of the *Act* allows a landlord to terminate a rental agreement on three (3) months notice without having to provide reasons to either the tenant or to this Tribunal.
23. The validity of such a notice is determined by its compliance with any number of provisions of the *Act*. If and where a notice is found to not comply with any particular provision, the notice is deemed not valid.
24. Specific to a termination notice issued by a landlord under section 18 of the *Act*, it is required to comply with each of the following to be deemed valid:
 - Rental agreement specific timelines for issuing a notice (18(2) of the *Act*);
 - Specific details on notices issued (18(9) of the *Act*);
 - Specific details on notices issued (34 of the *Act*); and
 - Requirements for service of the notice (35 of the *Act*).
25. Regarding the Section 18 Termination Notice issued to the tenant on 27 May 2022, I noted the tenant's concerns as communicated in paragraph 21, and sought clarification from the landlord about any possible connection between the tenant's requests and the later issuance of a termination notice. As shown in paragraph 20, I was satisfied by the landlord's testimony that the two things were unrelated. As such, I find that the notice was issued and served properly, which means that it is a valid notice.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises is successful.
27. 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 Decision

28. The landlord is entitled to the following:

- An order of vacant possession;
- Payment of rent in the amount of \$2,380.80;
- Payment of a daily rate of rent in the amount of \$36.16, beginning 06 October 2022 and continuing to the date the landlord obtains possession of the rental unit.
- 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.

05 October 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal