

Residential Tenancies Tribunal

Application 2022 No. 0731 NL

Decision 22-0731-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:02 AM on 05 October 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", also participated in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by electronically of the claim against her. The landlord testified that she also left a copy of the respondent information package at the tenant's door and the tenant did not raise any concerns with service.
5. The details of the claim were presented as a fixed term rental agreement that started on 15 September 2021. Rent was set at \$1,500.00 a month including oil and internet, and a security deposit in the amount of \$1,000.00 was collected.
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 \$1,500.00; 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 sections 14 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

10. The landlord amended her application at the hearing and testified that she would like to retain the security deposit against monies owing as rental arrears.

Issue 1: Payment of Rent (\$1,500.00)

Landlord's Position

11. The rental premises is a basement apartment located at [REDACTED] [REDACTED], occupied by the tenant and her family. The landlord occupies the main floor apartment.
12. The landlord testified that she has received no rent from the tenant since rent was received for July 2022. She stated that rent was to be received on the first of the month, but that the tenant started paying biweekly, and then sporadically, and then stopped paying rent completely, all of which is indicated in the bank statements submitted (L#3). The landlord testified that she is seeking payment of the \$1,500.00 rent for August 2022 even though she is out of rent for September, and likely will not be able to rent for October, but she hopes that the tenant and her family will be vacating the rental premises on the day of the hearing as they indicated.

Tenant's Position

13. The tenant testified that she would pay rent by Etransfer and sometimes cash, that she would pay \$375.00 every two weeks and that her daughter would do the same. The tenant also testified that she thinks her last rent payment was in August, but that she cannot remember because the landlord has issued her a number of termination notices. The tenant testified that she is vacating the rental premises today (the day of the hearing), and is just waiting on the moving truck so that she can move to the west coast with her daughter.

Analysis

14. I accept that the tenant and landlord agree that rent has not been fully paid since at least August 2022. Regarding the landlord's entitlement to rent, she testified that she is only seeking rent in the amount of \$1,500.00 for August 2022. From reviewing the landlord's bank statements, I have determined that total payments

in the amount of \$1,050.00 were received in June 2022, \$675.00 in July 2022 and \$525.00 in August 2022 making for total arrears of \$2,250.00 for those three months alone (e.g., \$4,500.00 - \$1,050.00 - \$675.00 - \$525.00). In addition to this, the landlord and tenant agreed that no rent payments have been received since August 2022, even though rent came due in the amount of \$1,500.00 for September and \$1,500.00 for October 2022. Because the landlord is seeking \$1,500.00 in rental arrears, her claim will succeed in that amount.

Decision

15. The landlord's claim for rent succeeds in the amount of \$1,500.00.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

16. The landlord submitted a copy of the termination notices she has issued to the tenant, the most recent of which was issued on 12 August 2022 and identified a move out date of 23 August 2022 (L#4). All notices are standard templates issued under section 19 of the Act for non-payment of rent. These notices were served by being posted to the tenant's door.
17. According to the landlord's records, the tenant owed at least \$1,275.00 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

18. 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.

19. According to the landlord's records, on 03 August 2022, the day the termination notice was issued, the tenant was in arrears in the amount of at least \$1,275.00.
20. 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

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. 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: Security Deposit

Relevant Submissions

23. The landlord testified that she would like to retain the \$1,000.00 security deposit against monies owed, and that she had no written agreement with the tenant on disposal of the deposit. The tenant provided no particular comment.

Analysis

24. According to section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018*:

(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.*

(12) *A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.*

(14) *Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.*

25. As the landlord has successfully established that the tenant has arrears in excess of the security deposit collected, the landlord shall retain the full value of the \$1,000.00 security deposit.

Hearing Expenses

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

Summary of Decision

27. The landlord is entitled to the following:

- To retain the full value of the \$1,000.00 security deposit collected;
- An order for vacant possession of the rented premises.
- An order for payment in the amount of \$570.00, determined as follows:
 - a) Rent Owing.....\$1,500.00
 - b) Hearing Expenses.....\$20.00
 - c) **LESS Security Deposit.....\$1,000.00**
 - d) Total..... **\$570.00**
- 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.

06 October 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal