

Residential Tenancies Tribunal

Applications: 2022 No. 0789 NL

Decision 22-0789-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15AM on 20 October 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" respectively, did not participate in the hearing.
4. Two affidavits of service were provided by the landlord (L#1) confirming that both tenants were individually served by registered mail on 21 September 2022 of the claim against them. A review of associated tracking numbers confirms that tenant2 picked up this package, but tenant1 did not. Of note is that subsection 42(6) of the *Residential Tenancies Act* considers items served by registered mail, to be served 5 days after the registered mail is sent.
5. The details of the claim were presented as a month-to-month rental agreement that started on 01 December 2017. Monthly rent is due on the first of the month, and currently set at \$890.00. A security deposit in the amount of \$450.00 was collected in two payments (27 November 2017 and 7 December 2017) and a copy of the written rental agreement was not provided.
6. The applicant in a proceeding under the *Residential Tenancies Act* has the burden of proof. This means they are responsible for proving 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 rent to be paid in the amount of \$1,020.00;
 - An order for late fees to be paid 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 sections 14, 15 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the provided number ([REDACTED]). 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 he has been properly served.
12. As the tenants were 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 her application to:
 - Reduce the amount of rent she is claiming to \$960.00; and
 - State that she is also looking to retain the \$450.00 security deposit against monies owed.

Issue 1: Payment of Rent (\$960.00)

Relevant Submissions

14. The landlord submitted a copy of her rental ledger (dated 20 October 2022) and testified that the tenants currently owe \$960.00 in rent (L#2). The landlord reviewed the ledger and testified that there have been multiple payments made on this account, but that these payments have not brought it to zero.

Analysis

15. I accept the landlord's claim and evidence that there are arrears on the tenants account. Because the landlord is seeking an order for vacant possession of the rental unit, I find that the landlord is entitled to payment of rent to the date of this hearing, and payment of a rental per diem for each day hereafter that the tenants retain possession of the unit.
16. I accept that the tenants owed \$570.00 in rent as at 30 September 2022.
17. Regarding October rent owing as at the day of the hearing, I find that the tenants owe \$754.00 as per the calculations below. Because tenant1 made a series of payments in October totaling \$500.00 (\$150.00 + \$250.00 + \$100.00) I find that the tenants own \$824.00 in rent as at the day of the hearing.

$\$890.00 \times 12 = \$10,680.00 / 365 = \$29.26$ rent per diem

$\$29.26 \times 20 = \754.00 for rent owing October 1 – 20 2022

$\$754.00 + \$570.00 = \$1,324.00$ total possible rent owing

$\$1,324.00 - \$500.00 = \$824.00$ actual rent owing as at 20 October 2022

Decision

18. The landlord's claim for rent succeeds in the amount of \$824.00.
19. The landlord is entitled to a rental per diem in the amount of \$29.26, beginning 21 October 2022 and continuing to the date the landlord obtains possession of the rental unit.

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

Landlord's Position

20. The landlord has assessed late fees in the amount of \$75.00. The landlord referred to her submitted rent ledger and testified that the tenants last had a zero dollar balance on 29 April 2022.

Analysis

21. 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.

22. 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.*

23. As the tenants have been in arrears since at least 2 May 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession

Relevant Submissions

25. The landlord submitted a copy of a termination notice issued on 25 August 2022 with an effective date of 06 September 2022 (L#3). The notice was a standard notice of termination under Section 19 of the Act and the landlord testified it was served by being posted to the door on the day it was issued.

26. According to the landlord's records, the tenants owed \$765.00 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

27. 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.

28. According to the landlord's records, on 25 August 2022, the day the termination notice was issued, the tenants were in arrears in the amount of \$765.00.
29. 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

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

32. Proof of a \$450.00 security deposit is provided on the submitted rental ledger. The landlord testified that it is written in the rental agreement that the deposit can be retained against monies owed by the tenants.

Analysis

33. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

- (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.*

34. The landlord's claim for compensation for rent and late fees has succeeded in excess of the \$450.00 security deposit collected. As such, I find that she is entitled to retain the full amount of the security deposit collected against monies owed by the tenants.

Decision

35. The landlord's application to retain the tenants' security deposit succeeds in the full amount of \$450.00.

Issue 4: Hearing Expenses

36. The landlord claimed the \$20.00 expense of applying for this application. As her claim has been successful, the tenants shall pay this expense.

Summary of Decision

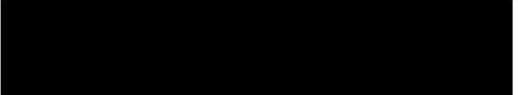
37. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- An order to retain the full value of the \$450.00 security deposit collected.
- An order for payment in the amount of \$469.00, determined as follows:

a) Rent Owing.....	\$824.00
b) Late Fees.....	\$75.00
c) Hearing Expenses.....	\$20.00
d) LESS Security Deposit.....	\$450.00
e) Total.....	<u>\$469.00</u>
- An order for payment of a daily rate of rent in the amount of \$29.26, beginning 21 October 2022 and continuing to the date the landlord obtains possession of the rental unit.
- The tenants 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.

25 October 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal