

Residential Tenancies Tribunal

Applications: 2022 No. 0834 NL

Decision 22-0834-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:18AM on 07 November 2022 via teleconference.
2. The applicant, [REDACTED], as represented by his wife, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The landlord testified that [REDACTED] is the sole owner of the rental premises.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" respectively, did not participate in the hearing.
4. The landlord submitted an affidavit of service confirming that she served tenant1 in person on 28 September 2022. The landlord testified that she did not serve tenant2 because she understands tenant2 to no longer be residing at the rental premises. She also testified that she only included him in the application because his name was originally on the lease.
5. The details of the claim were presented as an originally fixed term rental agreement that started on 01 August 2018 and now operates month-to-month. Monthly rent is due on the first of the month, and currently set at \$750.00. A copy of the written rental agreement was provided and the landlord testified that a security deposit was not collected (L#2).
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 \$2,360.00; 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 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 numbers: [REDACTED] and [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 they have been properly served.
12. Because I was able to confirm that tenant1 was properly served and that the landlord was seeking payment of rent from tenant1 only, I proceeded with the hearing in the absence of the tenants as any further delay in these proceedings would unfairly disadvantage the landlord.
13. The landlord amended her application to remove tenant2 as a named respondent in her claim, and to also increase the amount of rent owing from the date she submitted the application in September 2022.

Issue 1: Payment of Rent (\$2,885.00)

Relevant Submissions

14. The landlord testified that the actual rate of rent between October 2021 and July 2022 was reduced to \$700.00 a month (from \$750.00) in exchange for tenant1 completing required yard work at the rental premises. The landlord testified that rent was increased back to the full amount of \$750.00 a month from August 2022 onwards. The landlord testified that she attempted to work with tenant1 to establish a payment plan to deal with arrears earlier in the summer.

15. The landlord did not submit a copy of a rent ledger but she did provide copies of all ETransfer receipts as well as a single cash receipt (L#3). The landlord reviewed all payments received between October 2021 and October 2022 and stated that she agreed with my calculations shown in the table below, depicting arrears in the amount of \$2,885.00 as at 31 October 2022.

	Rent	Paid
21-Oct	\$700.00	\$700.00
21-Nov	\$700.00	\$0.00
21-Dec	\$700.00	\$575.00
22-Jan	\$700.00	\$350.00
22-Feb	\$700.00	\$300.00
22-Mar	\$700.00	\$1,500.00
22-Apr	\$700.00	\$0.00
22-May	\$700.00	\$0.00
22-Jun	\$700.00	\$650.00
22-Jul	\$700.00	\$750.00
22-Aug	\$750.00	\$690.00
22-Sep	\$750.00	\$150.00
22-Oct	<u>\$750.00</u>	<u>\$700.00</u>
	\$9,250.00	=
	\$6,365.00	
	Owning	-
	\$2,885.00	

16. Regarding entitlement to rent for November 2022, the landlord testified that she attempted on multiple occasions to confirm that the tenant had vacated the premises between 01 November 2022 and 04 November 2022. She further stated that she requested and received the keys back from the tenant1 on 04 November 2022 with the expectation that tenant1 would vacate the premises by the end of the day. The landlord testified that she returned to the premises on 06 November 2022 and found that “*most of her stuff was still there*”. The landlord testified further that tenant2 retains a copy of the keys to the rental premises and that she expects to receive these keys “*maybe tonight or tomorrow*” but that she was not sure.

Analysis

17. I accept the landlord’s claim and evidence that there are arrears on tenant1’s account in the amount of \$2,885.00 as at 31 October 2022. Because the landlord testified that she took back keys from tenant1 for the rental premises on 04 November 2022, I find that she is entitled to rent until that day only, in the total amount of \$2,983.64, as shown in the calculations below:

$$\begin{aligned} \$750.00 \times 12 &= \$9,000.00 / 365 = \$24.66 \text{ rent per diem} \\ \$24.66 \times 4 &= \$98.64 \text{ for rent owing November 1 – 4, 2022} \\ \$98.64 + \$2,885.00 &= \$2,983.64 \text{ rent owing as at 04 November 2022} \end{aligned}$$

18. Regarding the landlord's concerns with tenant1's possessions and how they remain in the rental premises, she is encouraged to reach out to the Residential Tenancies office for more information regarding appropriate procedure for dealing with tenants' possessions.

Decision

19. The landlord's claim for rent succeeds in the amount of \$2,983.64.

Issue 2: Vacant Possession

Relevant Submissions

20. The landlord submitted a copy of a termination notice issued to the tenant on 28 September 2022 (L#4). She testified that the notice was issued at the same time that the landlord served notice of her application for dispute resolution. The landlord reviewed the notice issued and testified that the date signed is 12 September 2022 and that the move out date is 05 October 2022, which, as she testified, was more time than she was required to give the tenant.
21. According to the landlord's records, the tenants owed \$2,835.00 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 tenant1'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 28 September 2022, the day the termination notice was served, the tenant was in arrears in the amount of \$2835.00. This means that the landlord issued the section 19 termination notice for a valid purpose. However, I find that the notice itself is not valid because the landlord served it without providing the required "not less than 10 days" for tenant1 to vacate. I specifically find that the landlord only allowed tenant1 8 days to vacate the rental premises after being served on 28 September 2022 with notice to vacate on 05 October 2022. As such, I find that the notice dated 12 September 2022 is not a valid notice.
24. Where it is noted in paragraph 16 that the landlord took back keys to the rental premises on 04 November 2022, this finding of "not valid" may be of no consequence to the landlord. If however, it is of consequence, the landlord is encouraged to reach out to her case manager with the Residential Tenancies office for advice.

Decision

25. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 3: Hearing Expenses

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

Summary of Decision

27. The termination notice with the issue date of 12 September 2022 is not a valid notice.
28. The landlord is entitled to an order for payment in the amount of \$3,003.64, determined as follows:
 - a) Rent Owing.....\$2,983.64
 - b) Hearing Expenses.....\$20.00
 - c) Total.....\$3,003.64

07 November 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal