

## Residential Tenancies Tribunal

Application 2022 No. 0860 NL

Decision 22-0860-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 11:03 AM on 15 November 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and, hereinafter referred to as “the landlord”, participated in the hearing, as did the respondent, [REDACTED], hereinafter referred to as “the tenant”.
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served electronically on 03 October 2022 using the email address [REDACTED] provided for communications. The landlord also provided proof of service by email (L#2).
4. The details of the claim were presented as a month-to-month rental agreement, operating since 20 December 2019. Monthly rent was set at \$594.00, due on the first of the month, and a security deposit in the amount of \$300 was collected. A copy of the written rental agreement was provided (L#3).
5. 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

6. The landlord is seeking the following:
  - An order for payment of rent in the amount of \$2,162.00;
  - An order to retain the security deposit in the amount \$300.00; and
  - An order for vacant possession of the rental premises.

## Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
8. Also relevant and considered in this case are sections 14 and 19 of the *Residential Tenancies Act, 2018*.

## Preliminary Matters

9. The landlord amended her application at the hearing and stated that she is now seeking a total claim of rent in the amount of \$2,950.00.

### Issue 1: Payment of Rent (\$2,950.00)

#### Landlord's Position

10. The rental premises is located at [REDACTED]. The landlord submitted a copy of current rental ledger (L#3) and testified that the tenant owes \$2,950.00 in rent as at the day of the hearing. She reviewed the ledger and testified that the tenant previously had arrears on his account between April 2021 and April 2022 before they were finally paid. The landlord testified that the current arrears have been accumulating since 02 June 2022 with 6 months rent coming due (e.g., 6 x \$594.00 = \$3,564.00), and only \$600.00 in rent paid.

#### Tenant's Position

11. The tenant agreed that he owes \$2,950.00 in rent. He testified that he made an agreement in September 2022 with the landlord to pay down the arrears through weekly payments, but then he got hurt on the job and later lost his employment. The tenant testified that he has since applied for social assistance and EI.

## Analysis

12. I accept that the landlord and tenant agree on the amount of rent owing. Regarding the landlord's exact entitlement to rent, I agree with her evidence that she is owed \$2,356.00 in rent as at 31 October 2022. Because the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing (15 November 2022) and a per diem thereafter.
13. I therefore calculate the total arrears owing as at 15 November 2022 to be \$2,648.95. This amount was arrived at through the following calculations:

- $\$594.00 \times 12 = \$7,128.00 / 365 = \$19.53$  per day
- $\$19.53 \times 15 = \$292.95$  for November 1 - 15, 2022
- $\$2,356.00 + \$292.95 = \$2,648.95$  for total possible rental arrears

## Decision

14. The landlord's claim for rent succeeds in the amount of \$2,648.95
15. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$19.53, beginning 16 November 2022 and continuing to the date the landlord obtains possession of the rental unit.

## Issue 2: Vacant Possession of Rented Premises

### Landlord's Position

16. The landlord submitted a copy of a termination notice issued on 15 September 2022 with an effective date of 27 September 2022 (L#5). 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 email on the day it was issued to the email address used for communications with the tenant.
17. According to the landlord's records, the tenant owed \$2,162.00 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 account. The landlord testified that she is seeking vacant possession because she previously tried to work with the tenant, and as soon as his arrears were paid off, they began accumulating again.

### Tenant's Position

18. The tenant acknowledged receiving the termination notice as issued by the landlord. He testified to the stress of this experience and declared that he wanted to work things out with the landlord.

## Analysis

19. 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.*

20. According to the landlord's records, on 15 September 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$2,162.00. 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 \$300.00 Relevant Submissions**

23. The rental agreement provides evidence of a \$300.00 security deposit (L#3).

## **Analysis**

24. 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.*

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*(12) A landlord who does not make an application in accordance with subsection*

*(11) shall return the security deposit to the tenant.*

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*(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 amount owing to the landlord for rent is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$300.00 security deposit.

## **Decision**

26. The landlord shall retain the full value of the \$300.00 security deposit.

## **Issue 4: Hearing Expenses**

27. The landlord claimed the \$20.00 expense of applying for this hearing. As her claim has been successful, the tenant shall pay this expense.


## Summary of Decision

28. The landlord is entitled to the following:

- To retain the full value of the \$300.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$2,368.95 determined as follows:
  - a) Rent..... \$2,648.95
  - b) Hearing Expenses .....\$20.00
  - c) LESS Security Deposit.....(\$300.00)
  - d) Total.....\$2,368.95
- An order for payment of a daily rate of rent in the amount of \$19.53, beginning 16 November 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.

17 November 2022

Date

  
Jaclyn Casler  
Residential Tenancies Tribunal