

Residential Tenancies Tribunal

Applications: 2022 No. 0906 NL

Decision 22-0906-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 23 November 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”, did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by registered mail of the claim against him. A review of the tracking number provided (L#2) with the affidavit indicates that the package was picked up on 21 November 2022. As however, 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, and the package was initially mailed on 31 October 2022, I consider the tenant properly served.
5. The details of the claim were presented as a rental agreement that started 01 October 2022. Monthly rent was set at \$1,100.00 due at the first of the month, POU and a security deposit in the amount of \$825.00 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. 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 \$1,100.00; 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 tenant was not present or represented at the hearing and I was unable to reach him by telephone at [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 tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
13. The landlord amended his application at the hearing and stated that he is now seeking a total claim of rent in the amount of \$2,200.00 as a result of rent that has come due since the filing of the application.

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

Relevant Submissions

14. The rental premises is located at [REDACTED]. The landlord did not provide a rent ledger. He testified that rent was paid by email transfer and that he has not received payment for rent for October 2022 or November 2022. The landlord testified that he previously had a collegial relationship with the tenant. He spoke of how he believed issues only started after he served the tenant a section 18 termination notice on 28 July 2022 that identified a move out date of 31 October 2022 (L#3).

Analysis

15. I accept the landlord's testimony and that the tenant owed rent in the amount of \$1,200.00 for October 2022. Because the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing (23 November 2022) and a per diem thereafter.
16. I therefore calculate the total arrears owing as at 23 November 2022 to be \$1,931.68. This amount was arrived at through the following calculations:
 - $\$1,100.00 \times 12 = \$13,200.00 / 365 = \$36.16$ per day
 - $\$36.16 \times 23 = \831.68 for November 1 - 23, 2022
 - $\$1,100.00 + \$831.68 = \$1,931.68$ for total rental arrears

Decision

17. The landlord's claim for rent succeeds in the amount of \$1,931.68.
18. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$36.16, beginning 24 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

19. The landlord submitted a copy of a termination notice issued on 12 October 2022 with an effective date of 23 October 2022 (L#4). 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 text on the day it was issued, and that the tenant responded with promises to pay by 16 October 2022. However, no payment was received, or has been received since.
20. According to the landlord's records, the tenant owed \$1,100.00 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 he has since discovered a dog being kept on the rental premises which is contrary to the lease, and that the locks to the rental premises have also been changed.

Analysis

21. 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.

22. According to the landlord's records, on 12 October 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$1,100.00. 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

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

24. 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 of Decision

25. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- An order for payment from the tenant for rent in the amount of \$1,931.68.
- An order for payment of a daily rate of rent in the amount of \$36.16, beginning 24 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.

24 November 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal