

Residential Tenancies Tribunal

Applications: 2022 No. 0934 NL

Decision 22-0934-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:16 PM on 28 November 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The landlord’s son, [REDACTED], did not participate in the hearing. The landlord testified that he is the property owner and that his son is the landlord (as shown in the rental agreement).
3. The respondents, [REDACTED], [REDACTED], and [REDACTED], hereinafter referred to as “tenant1”, “tenant2” and “tenant3” did not participate in the hearing.
4. Affidavits of service was provided by the landlord confirming that he served tenant1 ([REDACTED]) and tenant2 ([REDACTED]) electronically on 29 October 2022 (L#1). The landlord testified that he served to the email addressed provided on the rental agreement and that he did not serve tenant3 because she did not have an email and he understands her to be the wife of tenant2. The landlord provided proof of electronic service to the tenant1 and tenant2 in the same document referenced above.
5. The details of the claim were presented as a recently established month-to-month rental agreement that started 01 September 2022. Monthly rent is \$1,000.00 due at the first of the month, and a security deposit in the amount of \$500.00 was collected. A copy of the written rental agreement was submitted (L#2).
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

- The landlord is seeking the following:
 - i. An order for vacant possession;
 - ii. An order for payment of rent in the amount of \$1,075.00; And
 - iii. An order to retain the full amount of the \$500.00 security deposit collected.

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, 15 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at either [REDACTED] or [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. 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.
11. 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.
12. The landlord amended his application at the hearing to state that he is seeking payment of rent in the amount of \$2,000.00 (\$1,000.00 October 2022 and \$1,000.00 November 2022) as well as payment of late fees in the amount of \$75.00.

Issue 1: Payment of Rent (\$2,000.00)

Relevant Submissions

13. The rental premises is a single family dwelling located at [REDACTED]. The landlord testified that rent for September 2022 was paid in cash, and that subsequent rent was to be paid by email transfer to his son however, no money has been received. The landlord testified that he happened to be in the area in October, and attended to the rental premises on 03 October 2022.

14. He testified that he was eventually let into the rental premises and allegedly told by tenant3, that they “have no money”. The landlord testified that he recently contacted a neighbour of the rental premises, and that he understands it is still occupied by the tenants.

Analysis

15. I accept that the landlord is owed rent because no payments have been received since rent for September 2022 was received. As such, I accept that the landlord is owed \$1,000.00 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 (28 November 2022) and a per diem thereafter.
16. I therefore calculate the total arrears owing as at 28 November 2022 to be \$1,920.64. This amount was arrived at through the following calculations:
- $\$1,000.00 \times 12 = \$12,000.00 / 365 = \$32.88$ per day
 - $\$32.88 \times 28 = \920.64 for November 1 - 28, 2022
 - $\$1000.00 + \$920.64 = \$1,920.64$ for total possible rental arrears

Decision

17. The landlord’s claim for rent succeeds in the amount of \$1,920.64.
18. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$32.88, beginning 29 November 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

19. The landlord has assessed late fees in the amount of \$75.00 because the tenants have had arrears on their account since at least 02 October 2022.

Analysis

20. 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.*

21. 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.

22. Because the tenants have been in arrears since at least 02 October 2022 (30 days late in October and 28 days late in November) I find that the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Landlord's Position

24. The landlord submitted a copy of a termination notice issued on 07 October 2022 with a stated move out date of 18 October 2022 (L#3). 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 issued by his son and served by email to tenant1 and tenant2 on the day it was issued. Proof of service by email was included with the termination document.
25. According to the landlord's records, the tenants owed \$1,000.00 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 also referred to a photo submitted of garbage at the rental premises.

Analysis

26. 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.

27. According to the landlord's records, on 07 October 2022, the day the termination notice was issued, the tenants was in arrears in the amount of \$1,000.00 and did not pay this off prior to the stated move out date. Consequently, I find that 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

28. The landlord's claim for an order for vacant possession of the rented premises succeeds.
29. 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 4: Security Deposit \$500.00 Relevant Submissions

30. The landlord provided proof of a receipt issued to tenant¹ for payment of the \$500.00 security deposit on 02 September 2022 (L#4).

Analysis

31. 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.

32. As the amount owing to the landlord for rent and late fees is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$500.00 security deposit.

Decision

33. The landlord shall retain the full value of the \$500.00 security deposit.

Issue 4: Hearing Expenses

34. The landlord claimed the \$20.00 expense of applying for this hearing. As his claim has been successful, the tenants shall pay this expense.

Summary of Decision

35. The landlord is entitled to the following:

- To retain the full value of the \$500.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$1,515.64 determined as follows:
 - a) Rent..... \$1,920.64
 - b) Late Fees.....\$75.00
 - c) Hearing Expenses\$20.00
 - d) LESS Security Deposit.....(\$500.00)
 - e) Total.....\$1,515.64
- An order for payment of a daily rate of rent in the amount of \$32.88, beginning 29 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.

29 November 2022
Date


Jaclyn Casler
Residential Tenancies Tribunal