

Residential Tenancies Tribunal

Applications: 2022 No. 1028 NL

Decision 22-1028-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:15 AM on 12 January 2023 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, 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 her. A review of the tracking number provided with the affidavit indicates that the package was picked up.
5. The details of the claim were presented as a currently month-to-month rental agreement that started in 2015, for which the original lease document was provided (L#2). Current rent is set at \$935.00 a month and a security deposit in the amount of \$442.00 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:
 - Payment of rent in the amount of \$229.00;
 - Payment of late fees in the amount of \$75.00;
 - An order for vacant possession; and
 - An order to retain the security deposit in the amount of \$442.00.

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 are sections 14, 15 and 19 as well as 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 her by telephone at the number provided: [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 she 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 her absence.
13. Landlord1 testified that the tenant's husband, as shown on the lease document, is deceased and so he was not served notice of termination or notice of claim.

Issue 1: Payment of Rent (\$229.00)

Landlord's Position

14. The rental premises is located at [REDACTED] and a copy of the current rental ledger was submitted (L#3). Landlord1 testified that the tenant's rent is partially subsidized and that current arrears are the result of her payment for October 2022 being returned. This returned payment resulted in a NSF charge of \$50.00 also being added to the tenant's account.

Analysis

15. I reviewed the rental ledger and due to the date of the hearing, I find that the tenant does not owe rent to the landlord as at the day of the hearing. This is because, as shown on the ledger, rent in the required monthly amount of \$935.00 (\$731.00 subsidy and \$204.00 tenant) has been paid for January 2023. Furthermore, I note that Residential Tenancy Policy 12-01 Recovery of Fees, permits landlords to charge only the same amount charged by their financial institution as NSF fees. In absence of such information provided by the landlord, I will permit the \$25.00 NSF charge specified in the text of the tenants' 2015 rental agreement.
16. Accordingly, I find, as shown in the calculations below, that the tenant has a rent credit on her account in the amount of \$337.12 as of the day of the hearing.

$\$229.00 - \$50.00(\text{NSF}) = \$179.00$ Rent Only Arrears claimed
 $\$179.00 + \$25.00 = \$204.00$ (NSF) = Rent + Permitted NSF charge
 $\$935.00 \times 12 = \$11,220.00 / 365 = \$30.74$
 $\$30.74 \times 12 = \368.88 for rent owing as at 12 January 2023
 $\$204.00 - \566.12 (remaining rent for January 2023) = Credit of \$362.12

Decision

17. The landlords claim for rent does not succeed due to the credit on the account of \$362.12 as at the day of the hearing.
18. The landlord is entitled to deduct a daily payment of rent in the amount of \$30.74 from this credit beginning 13 January 2023 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 due to the return payment received by the tenant in 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. As stated in paragraph 15, I found that the tenant does not currently owe rent to the landlord. Furthermore, because rent for the tenant is subsidized, I found that the balance of her rental account cycles between rent arrears and rent credits each month. This means that, in accordance with section 15 of the *Act*, the landlord is only entitled to payment of late fees for a specific period of arrears.
23. Using the example of October 2022, the tenant was in arrears between 02 October and 30 October 2022 before her rental subsidy came in on 31 October 2022 and a \$502.00 credit was recognized on her account. I therefore calculate the landlord's entitlement to late fees for the month of October 2022 as follows:
- Oct 2 2022 = \$5.00
 - Oct 3 – Oct 30 = 27 days = 27 x \$2.00 = \$54.00

Decision

24. The landlords' claim for late fees succeeds in the amount of \$59.00 (e.g., \$5.00 + \$54.00).

Issue 3: Vacant Possession of Rented Premises

Landlord's Position

25. The landlord submitted a copy of a termination notice issued on 12 October 2022 and served to the tenant on 14 October 2022 (L#4). Landlord1 testified that this notice was hand delivered and proof of a signed receipt by the tenant, for the notice was provided (see page 2 in L# 4). The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018* and the stated move out date was 25 October 2022.
26. According to the landlord's records, the tenant owed \$229.00 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. Landlord 2 testified that it was "too bad" that the tenant did not join the call because the landlord was willing to mediate.

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 14 October 2022, the day the termination notice was served, the tenant was in arrears in the amount of \$229.00. These arrears then remained on the tenants account until her November 2022 subsidy was received on 31 October 2022. Consequently, I find that this 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

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

30. 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 \$442.00

Relevant Submissions

31. The rental agreement provides evidence of a \$442.00 security deposit (L#2). Landlord1 testified that she is seeking to retain the full value of the security deposit against rent monies owing.

Analysis

32. 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.

33. As shown in paragraph 16, I found that the tenant has a credit on her account as at the day of the hearing. Consequently, I find that the landlords are not entitled to retain any portion of the tenant's security deposit at this time.

Decision

34. The landlord is not entitled to retain the \$442.00 security deposit.

Issue 5: Hearing Expenses

35. The landlord claimed the \$20.00 expense of applying for this hearing along with the \$14.90 expense of service by registered mail (L#5). As their claim has been successful, they shall deduct this expense of \$34.90 from the tenant's rental credit.

Summary of Decision

36. The landlord is not entitled to the \$442.00 security deposit at this time.

37. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- As the tenant has a rent credit for the period ending 12 January 2023 in the amount of \$268.22, determined as follows:

a) Rent Credit.....\$362.12

b) LESS: Hearing Expenses(\$34.90)

c) LESS: Late Fees.....(\$59.00)

d) Total Credit.....\$268.22

A payment of a daily rate of rent from the tenant in the amount of \$30.74, beginning 13 January 2023 shall be deducted from the tenant's credit balance 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.

20 January 2023

Date



Jaclyn Casler
Residential Tenancies Tribunal