

Residential Tenancies Tribunal

Applications: 2022 No. 1038 NL
2022 No. 1060 NL

Decision 22-1038-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:05 AM on 23 January 2023 via teleconference.
2. The applicant, [REDACTED] as represented by [REDACTED], 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 by email of the claim against her on 21 December 2022. Proof of service to the two emails used ([REDACTED] and [REDACTED]) was provided and the tenant confirmed service received.
4. The details of the claim were presented as an initially fixed term rental agreement that started 01 September 2020 for which an original rental agreement was provided (L#3). Current rent is set at \$1,200.00, due at the first of the month and a security deposit in the amount of \$825.00 was collected.
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. 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

6. The landlord is seeking the following:
 - Payment of rent in the amount of \$2,000.00; and
 - An order for vacant possession.

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 *Act*.

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 \$4,000.00 representing rent that has come due since her application was submitted in November 2022. Her claim was also amended to include a request to apply the tenant's security deposit against monies owed.
10. The tenant did not provide proof of service for her counter claim of 2022-1060-NL, and testified that no service occurred. I dismissed the tenant's application (seeking validity of termination notice) since her claim will be duly addressed through the landlords request for vacant possession.

Issue 1: Payment of Rent (\$4,000.00)

Landlord's Position

11. The rental premises is located at [REDACTED]. The landlord submitted a copy of current rental ledger (L#3) and testified that the tenant owes \$4,000.00 in rent as of the day of the hearing. She reviewed the ledger and testified that the tenant last had a zero dollar balance on her account in August 2022. The landlord testified that the current arrears have been accumulating because monthly payments of \$400.00 only have been received against monthly rent owed of \$1,200.00.

Tenant's Position

12. The tenant agreed that she owes \$4,000.00 in rent. She testified that she had been doing well, but then she lost disability payments and that it is struggle.

Analysis

13. 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 \$2,800.00 as at 31 December 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 (23 January 2023) and a per diem thereafter. I therefore calculate the total arrears owing as at 23 January 2023 to be \$3,707.35.

14. This amount was arrived at through the following calculations:

- $\$1200.00 \times 12 = \$14,400.00 / 365 = \$39.45$ per day
- $\$39.45 \times 23 = \907.35 for January 1 - 23, 2023
- $\$2,800.00 + \$907.35 = \$3,707.35$ for total possible rental arrears

Decision

15. The landlord's claim for rent succeeds in the amount of \$3,707.35.

16. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$39.45, beginning 24 January 2023 and continuing to the date the landlord obtains possession of the rental unit.

Issue 2: Vacant Possession of Rented Premises

Landlord's Position

17. The landlord submitted a copy of a termination notice issued on 16 December 2022 with an effective date of 28 December 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 both email addresses used for communications with the tenant. Proof of service by email was provided (L#6).

18. According to the landlord's records, the tenant owed \$3,200.00 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.

Tenant's Position

19. The tenant testified that she did not receive the termination notice sent on 16 December 2022 because she "has issues" accessing her email. She further testified that she was required to delete her [REDACTED] email address.

Analysis

20. 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.

21. According to the landlord's records, on 16 December 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$3,200.00. Where the tenant denied receiving this termination notice by email and testified that she deleted an email account previously used by the landlord for service, I reviewed the proof of service provided by the landlord. In doing so, I find that the landlord served the termination notice to the tenant's allegedly deleted email account. Because however, the tenant did not specify when this account was deleted, or whether notice of its deletion was provided to the landlord, I find the landlord's service of the termination notice by email on 16 December 2022 to be in accordance with 31(2)(f) of the Act. Furthermore, I previously noted that the tenant confirmed service by email of notice for this hearing, at least five days after the termination notice was served (e.g., 21 December 2022).
22. Consequently, I find that the notice issued on 16 December 2022 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.

Issue 3: Security Deposit \$825.00
Relevant Submissions

25. The rental agreement provides evidence of the \$825.00 security deposit (L#3).

Analysis

26. 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.

27. 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 \$825.00 security deposit.

Decision

28. The landlord shall retain the full value of the \$825.00 security deposit.

Issue 4: Hearing Expenses

29. 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

30. The landlord is entitled to the following:

- To retain the full value of the \$825.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$2,902.35 determined as follows:
 - a) Rent..... \$3,707.35
 - b) Hearing Expenses\$20.00
 - c) **LESS Security Deposit.....(\$825.00)**
 - d) Total.....**\$2,902.35**
- An order for payment of a daily rate of rent in the amount of \$39.45, beginning 24 January 2023 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.

25 January 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal