

Residential Tenancies Tribunal

Applications: 2022 No.1056 NL

Decision 22-1056-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:15AM on 19 January 2023 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and hereinafter referred to as "the landlord" participated in the hearing.
3. The respondent, [REDACTED], did not participate and was not represented at the hearing.
4. The landlord submitted an affidavit of service (L#1) confirming that she served the tenant by registered mail on 12 December 2022 and proof of service was provided. A review of tracking associated with this notice, confirms that this package was picked up on 29 December 2022.
5. The details of the claim were presented as a month-to-month rental agreement that started March 2017 with a copy of the original lease document provided (L#2). Monthly rent is set at \$543.00 and a security deposit was not 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 \$10,413.00; and
 - An order for vacant possession of the rental premises.

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*.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the provided numbers of [REDACTED].
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. The landlord testified that the tenant reached out to her today and indicated that he would not be participating. She further testified, that she responded by recommending that the tenant attend the hearing so that mediation could occur and the tenant could remain housed.
13. Also of note, is that the landlord has made at least three previous applications to this tribunal related to the tenant's occupancy of the rental premises. The landlord was most recently issued an order (2020 No. 131SJ) of vacant possession (see A#1) and payment of rent. However, the landlord testified that this order was never enforced as they chose to mediate internally with the tenant.
14. The landlord amended her claim for rent up to \$11,499.00 (e.g., current amount owing) because the tenant has not paid rent since the application for dispute resolution was submitted on 29 November 2022.

Issue 1: Payment of Rent (\$11,499.00)

Relevant Submissions

15. The rental premises is located in [REDACTED] and is known as [REDACTED]. The landlord submitted a copy of current rental ledger (L#3) and testified that the tenant last had a zero dollar balance in June 2019. The landlord also testified that the tenant has not paid rent since 15 November 2021 resulting in current arrears through to 30 January 2023, of \$11,499.00.

Analysis

16. I accept that the tenant has not paid rent as required. I also accept that this tribunal previously issued an order for payment of rent in the amount of \$4,507.60 on 02 September 2020. Because all orders of this tribunal are valid for a period of 10 years after issuance, I will not be considering the amount previously ordered for payment. I also note this tribunal previously ordered that the tenant pay a daily rental per diem of \$17.80 from 03 September 2020 onwards. I will use this information to calculate the landlord's current entitlement to rent.
17. Accordingly, I calculate that 868 days have elapsed between 03 September 2020 and the day of the hearing, 19 January 2023. I further calculate the landlord's total entitlement to rent for this same period to be \$15,450.00 (e.g., 868 x \$17.80). Then, as shown in the rental ledger provided, I accept that the tenant paid rent in the amount of \$8,700.00 during this same period. Consequently, I find that total rental arrears owing to the landlord as at the day of the hearing, and not previously addressed in an order issued by this tribunal, to be \$6,750.40 (e.g., \$15,450.40 - \$8,700.00).

Decision

18. The landlord's claim for rent succeeds in the amount of \$6,750.40.

Issue 2: Vacant Possession

Relevant Submissions

19. The landlord is seeking to regain possession of the rental premises due to non-payment of rent. She submitted a copy of the custom termination notice issued on 26 October 2022 (L#4). This notice was served by registered mail on 28 October 2022 and a review of tracking indicates that it was picked up on 16 November 2022. The stated move out date identified on the notice is 30 November 2022.
20. The landlord is seeking an order for vacant possession of the rented premises

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 26 October 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$9,870.00. 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.

Issue 2: Hearing Expenses

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

Summary Decision

26. The landlord is entitled to the following:

- An order for vacant possession.
- Payment from the tenant in the amount of \$6,770.40, determined as follows:
 - a) Rent.....\$6,750.40
 - b) Hearing Expenses.....\$20.00
 - c) Total.....\$6,770.40
- Payment from the tenant for 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