

Residential Tenancies Tribunal

Applications: 2022 No. 0950 NL

Decision 22-0950-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:15 PM on 19 December 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.
3. This hearing was originally scheduled for 24 November 2022 and then postponed to 19 December 2022 with service provided by this office (A#1). A review of the tracking number confirms that the tenant collected notice of this new date on 30 November 2022. The landlord also provided an affidavit of service related to the original hearing date (L#1), along with proof of tracking confirming that notice was collected by the tenant on 01 November 2022 (L#2).
4. The details of the claim were presented as a longstanding month-to-month agreement operating since 2014. Monthly rent is set at \$263.00, due at the first of the month, and a security deposit was not collected. A copy of a recent written rent renewal agreement was provided (L#3).
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:
 - An order for payment of rent in the amount of \$1,233.00; 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 is section 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The tenant was not present or represented at the hearing and I was unable to reach her 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*.
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 she has been properly served.
11. 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.
12. The landlord amended his application at the hearing and stated that he is now seeking a total claim of rent in the amount of \$959.30 through to 31 December 2022.

Issue 1: Payment of Rent (\$959.30)

Relevant Submissions

13. The rental premises is a row house located at [REDACTED] [REDACTED]. The landlord submitted a copy of current rental ledger (L#4) and testified that the tenant owes \$959.30 in rent as at the day of the hearing. He reviewed the ledger and testified that the tenant last had a credit on her account in August 2021.

Analysis

14. I accept that the tenant has arrears on her account and that he owed the landlord \$696.30 in rent as at 30 November 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 in the amount of \$696.30 to the date of the hearing (19 December 2022) and a per diem thereafter in the amount of \$8.65.

- $\$263.00 \times 12 = \$3,156.00 / 365 = \$8.65$ per day
- $\$8.65 \times 19 = \164.35 for December 1 - 19, 2022
- $\$696.30 + \$164.35 = \$860.62$ for total possible rental arrears

Decision

15. The landlord's claim for rent succeeds in the amount of \$860.62.
16. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$8.65, beginning 20 December 2022 and continuing to the date the landlord obtains possession of the rental unit.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

17. The landlord submitted a copy of a termination notice issued on 19 October 2022 with an effective date of 30 November 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 posted to the tenant's door, served by email, and also served by regular mail.
18. According to the landlord's records, the tenant owed \$1,233.30.00 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.

Analysis

19. 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.

20. According to the landlord's records, on 19 October 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$1,233.30. 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

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. 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: Hearing Expenses

23. The landlord claimed the \$20.00 expense of applying for this hearing (L#6). As his claim has been successful, the tenant shall pay this expense.

Summary of Decision

24. The landlord is entitled to the following:

- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$880.62 determined as follows:

a) Rent.....	\$860.62
b) Hearing Expenses	\$20.00
c) Total.....	<u>\$880.62</u>
- An order for payment of a daily rate of rent in the amount of \$8.65, beginning 20 December 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.

19 December 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal