

Residential Tenancies Tribunal

Applications: 2023-0010-NL

Decision 23-0010-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:18 AM on 02 February 2023 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" respectively did not participate and were also not represented at the hearing.
4. Two affidavits of service were provided by the landlord confirming that the tenants were served by email to the same address of [REDACTED] and proof of email sent was also provided in the same (L#1). The landlord testified, and provided supporting email evidence to confirm, that the email address of service belongs to the daughter of tenant1 and that the daughter has previously communicated to the landlord on her father's behalf using this email (L#1B).
5. The details of the claim were presented as a fixed term rental agreement that started on 01 November 2022 and was set to expire on 31 October 2023, for which a written copy of the original agreement was provided (L#2). As noted in this agreement, monthly rent was set at \$895.00 due at the first of the month, and a security deposit in the amount of \$640.00 was expected.
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 \$2,057.06;
 - An order for payment of late fees in the amount of \$75.00;
 - An order for vacant possession; and
 - An order to retain the full value of the security deposit in the amount of \$671.25.

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, 19 and 31 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The landlord identified the [REDACTED] ([REDACTED]) who was served by email with notice of the landlord's claim, as the contact of record for tenant1. When it was discovered that [REDACTED] was in fact listed as a tenant on the written rental agreement along with tenant1, the landlord testified that this was likely done in error by the local Resident Manager in [REDACTED]. Accordingly, the landlord testified this is why [REDACTED] was not identified as a respondent in this dispute.
11. Regarding tenant2, the landlord testified that he was never a tenant at the rental premises, but rather, a guarantor in accordance with 2(m)(2) of the *Act*. The landlord referred to a payment made by tenant2, as shown on the rental ledger, as evidence of tenant2's involvement with the rental unit. Consequently, I accept that tenant2 shall continue as a named party in this dispute.
12. The tenants were not present or represented at the hearing and I was unable to reach [REDACTED] at the designated phone number of [REDACTED]. This tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
13. 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.
14. Because the landlord provided evidence of his email correspondence with [REDACTED], I was able to determine that the tenants were properly served in accordance with communication channels established by [REDACTED]. As the

tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

15. The landlord amended his application to increase his claim for rent up to \$2,952.00. He also amended the application to remove the request for vacant possession since he took back possession of the rental premises on 19 January 2023 after successfully posting a notice of abandonment in accordance with section 31 of the Act on 18 January 2023.

Issue 1: Payment of Rent (\$2,952.00)

Relevant Submissions

16. The rental premises is located at [REDACTED] [REDACTED]. The landlord referred to the rent ledger submitted (L#3) and testified that he is seeking payment of rent through to the day that he regained possession of the rental premises (e.g., 19 January 2023 as noted in paragraph 15). The landlord testified that he would appreciate payment of rent through to the end of 31 January 2023 if the tribunal considers it appropriate.
17. The landlord read into the record his correspondence with [REDACTED] and indicated that he has not yet listed the rental premises as available. He testified that this is because, [REDACTED] emailed on 31 January 2023 to indicate that she will be flying tenant1 "back to Newfoundland in a few weeks". The landlord testified that he did not want to be the reason that tenant1 does not have a place to live if this happens. The landlord also stated that he will defer to any decisions made by this tribunal on who retains possession of the rental premises.
18. The landlord testified that although rent was due at the first of the month, he had agreed it could be paid on the 15 of each month without penalty as this coincided with old age security payments received by tenant1.

Analysis

19. I accept that the tenants had a fixed term rental agreement set to expire on 31 October 23. I also accept that the landlord took possession of the premises of 19 January 2023 after posting a successful notice of abandonment. Consequently I accept the landlord's claim for rent through to 31 January 2023 in recognition of the fact that the tenants had a fixed term rental agreement and that the landlord has not yet listed the premises for rent, despite taking back possession on 19 January 2023. I therefore accept that the tenants owe \$2,057.06 for rent through to 31 January 2023, as shown on the rental ledger submitted.

Decision

20. The landlord's claim for rent succeeds in the amount of \$2,057.06.

Issue 2: Payment of Late Fees (\$75.00)

Relevant Submissions

21. The landlord has assessed late fees in the amount of \$75.00 because no payments have been received since 16 November 2022.

Analysis

22. 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.

23. 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.

24. According to the rental ledger submitted, there have been arrears on tenant1's account since at least 16 November 2022. I also note that this date of arrears is in accordance with the landlord's commitment to accepting payments of rent on or before the 15th of each month. Because rent has been in arrears in excess of the days needed to calculate maximum late fees in accordance with paragraph 23 above, I find that the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Security Deposit \$671.25

Relevant Submissions

26. The rental ledger provides evidence of a \$671.25 security deposit paid on 16 November 2022 (L#3). I note that this is a higher amount than the \$640.00

identified in the rental agreement (L#2) but that it does not exceed the 75% of the monthly rate of rent in accordance with 14(1)(c) of the Act.

Analysis

27. 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.*

28. 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 \$671.25 security deposit.

Decision

29. The landlord shall retain the full value of the \$671.25 security deposit.

Issue 2: Hearing Expenses

30. 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

31. The landlord is entitled to the following:

- To retain the full value of the \$671.25 security deposit.
- An order for payment from the tenant in the amount of \$1480.81 determined as follows:
 - a) Rent..... \$2,057.06
 - b) Late Fees..... \$75.00
 - c) Hearing Expenses\$20.00
 - d) LESS Security Deposit.....(\$671.25)
 - e) Total.....\$1,480.81

07 February 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal

