

Residential Tenancies Tribunal

Applications: 2023 No. 0051 NL

Decision 23-0051-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 09 February 2023 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing and was not represented.
4. An affidavit of service was provided by the landlord confirming that the tenant was served by email to [REDACTED] and proof of the email sent on 19 January 2023 was provided (L#1). The landlord also provided proof of email service with tenant response to a 13 January 2023 termination notice sent to the same email address (L#2). Based on my review of this information, I concluded that the tenant was properly served notice of the claim against him.
5. The details of the claim were presented as a lot-rent agreement that started in April 2017 for a manufactured home. Monthly rent is \$255.00 due at the first of the month. A security deposit was not collected and a copy of a written rental agreement was not provided.
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 rent to be paid in the amount of \$925.00;
 - An order for late fees in to be paid in the amount of \$75.00;
 - An order for vacant possession.

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 15 and 19 of the *Act* and 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 him at any of the following phone numbers:
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
11. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 his absence.
13. The landlord amended his application at the hearing and stated that he is now seeking a total claim of rent in the amount of \$680.00 as a result of partial payment received. The landlord testified that he does not know who the [REDACTED] who has been making lot rental payments is, but that he suspects she may be the tenant's mother.

Issue 1: Payment of Rent (\$680.00)

Landlord's Position

14. The rental premises is a lot rental for a manufactured home located at [REDACTED]. The landlord submitted a copy of current

rental ledger dated 09 February 2023 (L#3) and testified that the tenant currently owes \$680.00 in rent as a result of a payment received on 01 February 2023.

Analysis

15. I reviewed the rent ledger provided and accept that the tenant owed \$925.00 in rent as at 31 January 2023. I also accept that a \$500.00 payment was received from [REDACTED] on 01 February 2023. 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 to the date of the hearing (09 February 2023) and a per diem thereafter.
16. I therefore calculate the total arrears owing as at 09 February 2023 to be \$500.42. This amount was arrived at through the following calculations:
 - $\$255.00 \times 12 = \$3,060.00 / 365 = \$8.38$ per day
 - $\$8.38 \times 9 = \75.42 for February 1 - 9, 2023
 - $\$925.00 + \$75.42 = \$1,000.42$ for total possible rental arrears
 - $\$1,000.42 - \500.00 (01 Feb 2023 payment) = \$500.42

Decision

17. The landlord's claim for rent succeeds in the amount of \$500.42.
18. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$8.38, beginning 10 February 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 because the tenant has been in arrears since June 2020.

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. Because the tenant has been in arrears since at least June 2020 (as shown in the ledger), I find that the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

24. The landlord submitted a copy of a termination notice issued on 12 January 2023 with an effective date of 24 January 2023 (L#5). The notice is 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 the day after (e.g., 13 January 2023) the notice was issued, and that proof of this email chain was provided and previously discussed as proof of the tenant's email address (L#2).
25. According to the landlord's records, the tenant owed \$925.00 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

26. 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.

27. According to the landlord's records, on 13 January 2023, the day the termination notice was served, the tenant was in arrears in the amount of \$925.00. 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

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

Summary of Decision

30. 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 \$575.42 determined as follows:
 - a) Rent..... 500.42
 - b) Late Fees.....\$75.00
 - c) Total.....\$575.42
- An order for payment of a daily rate of rent in the amount of \$8.38, beginning 10 February 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.

17 February 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal