

Residential Tenancies Tribunal

Applications: 2023 No. 0089 NL

Decision 23-0089-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 16 March 2023 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 and was not represented at the hearing.
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served notice of the original hearing date (e.g., 28 February 2023) by registered mail on 13 February 2023. A review of the tracking number provided [REDACTED] indicates that the package was not picked up by the tenant. The Residential Tenancies Office then sent the tenant notice of a rescheduled hearing on 24 February 2023 and a review of the associated tracking number [REDACTED] indicates that this package also was not collected. In accordance with subsection 42(6) of the Residential Tenancies Act the tenant is considered served by registered mail 5 days after the registered mail is sent.
4. The details of the claim were presented as a currently month-to-month rental agreement that started on or about 01 November 2020. Current rent is set at \$865.00 a month, due at the first of the month and a security deposit in the amount of \$450.00 was collected. A copy of the written rental agreement was not provided.
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 rent to be paid in the amount of \$865.00;
 - An order for late fees to be paid in the amount of \$75.00; and
 - An order for vacant possession of the rental premises.

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 14, 15, and 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] or [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 they have 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 her application at the hearing and stated that she is now seeking a total claim of rent in the amount of \$2,595.00 as a result of rent coming due and not paid for February or March 2023. Because there is a security deposit on file, disposition of the full \$450.00 will be considered.

Issue 1: Payment of Rent (\$2,595.00)

Relevant Submissions

13. The rental premises a multi-unit apartment located at [REDACTED] [REDACTED]. The tenant resides in unit [REDACTED]. The landlord submitted a copy of current rental ledger (L#2) and testified that the tenant owes \$2,595.00 in rent as at the day of the hearing.

Analysis

14. The landlord is responsible for establishing the rate of monthly rent and the tenant's payment history. Based on my review of the rental ledger provided, I accept that the tenant has not paid rent, and rent has not been paid on her behalf since a payment was received on 12 December 2022. Consequently, I accept the landlord's testimony and evidence that rent in the amount of \$1,730.00 was owing as at 28 February 2023. 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 (16 March 2023) and a per diem thereafter.
15. I therefore calculate the total arrears owing as at 16 March 2023 to be \$2,185.04. This amount was arrived at through the following calculations:
 - $\$865.00 \times 12 = \$10,380.00 / 365 = \$28.44$ per day
 - $\$28.44 \times 16 = \455.04 for March 1 - 16, 2023
 - $\$1,730.00 + \$455.04 = \$2,185.04$ for total possible rental arrears

Decision

16. The landlord's claim for rent succeeds in the amount of \$2,185.04.
17. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$28.44, beginning 17 March 2023 and continuing to the date the landlord obtains possession of the rental unit.

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

Relevant Submissions

18. The landlord has assessed late fees in the amount of \$75.00 because the tenant has had rental arrears since 02 January 2023.

Analysis

19. 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.

20. 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.*

21. Because there have been arrears on the tenant's account since at least 02 January 2023, I find that the landlord is entitled to payment of the maximum fee of \$75.00 as set by the minister.

Decision

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

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

23. The landlord submitted a copy of a termination notice issued on 26 January 2023 with an effective date of 06 February 2023 (L#3). 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 by the building manager to the tenant's door on the day it was issued.

24. According to the landlord's records, the tenant owed \$865.00 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

25. 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.

26. According to the landlord's records, on 26 January 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$865.00. 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

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

28. 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 4: Security Deposit \$450.00

Relevant Submissions

29. The rental ledger provides evidence of a \$450.00 security deposit (L#2).

Analysis

30. 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.*

31. As the amount owing to the landlord for rent and late fees is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$450.00 security deposit.

Decision

32. The landlord shall retain the full value of the \$450.00 security deposit.

Issue 5: Hearing Expenses

33. 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

- To retain the full value of the \$450.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$1,830.04 determined as follows:
 - a) Rent.....\$2,185.04
 - b) Late Fees.....\$75.00
 - c) Hearing Expenses\$20.00
 - d) **LESS Security Deposit.....(\$450.00)**
 - e) Total.....\$1,830.04
- An order for payment of a daily rate of rent in the amount of \$28.44, beginning 17 March 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.

22 March 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal