

Residential Tenancies Tribunal

Applications: 2023 No. 0141 NL

Decision 23-0141-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:47 PM on 13 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing, as did the respondent, [REDACTED], hereinafter referred to as “the tenant”.
3. An affidavit of service was provided by the landlord confirming that he served the tenant in person at her premises on 01 March 2023 (L#1). The tenant confirmed service.
4. The details of the claim were presented as a month-to-month rental agreement that started on 01 November 2022. Monthly rent is set at \$1,250.00 and a security deposit in the amount of \$800.00 was collected.
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 \$3,150.00; 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 are sections 14, and 19 of the *Act*.

Preliminary Matters

9. The landlord amended his application at the hearing and stated that he is now seeking a total claim of rent in the amount of \$4,400.00 in recognition of rent owed and not paid for March 2023. Where both parties acknowledged that an \$800.00 security deposit has been paid, disposition of this deposit will also be considered in this report.

Issue 1: Payment of Rent (\$1,196.50)

Landlord's Position

10. The rental premises a two unit apartment located at [REDACTED]. The tenant resides in the main floor unit. The landlord agreed that he provided the tenant with keys to the rental premises on 09 November 2022 and that rent was paid in full for November 2022. The landlord further agreed that the tenant made additional rent payments of \$700.00 in January 2023, but testified that rent has not otherwise been paid.

Tenant's Position

11. The tenant agrees that she owes the landlord rent, however, she disagrees on the amount. She testified that rent paid for November 2022 should be applied to rent for December 2022 because she only moved in to the premises in the last week of November 2022. She also stated that she made two payments to the landlord in January 2023 totaling \$700.00.
12. The tenant testified that she viewed the premises on either 30 or 31 October 2022 and that she has had a really hard time tracking down the landlord to get him to fix things at the premises. The tenant also provided testimony related to monies she owes for utilities at the rental premises and how she has attempted to have these charges reduced. When asked, the tenant stated that she has not made her own application to this tribunal.

Analysis

13. The landlord is responsible for establishing the monthly rate of rent and the tenant's payment history. Specific to this dispute, both parties agreed that monthly rent is \$1,250.00 and that the tenant has rental arrears. Regarding the landlord's exact entitlement to rent, I accept that both parties agree that keys were provided to the rental premises on 09 November 2022 even though full rent

was paid for that month. Consequently, I find that the tenant is entitled to a rental credit in the amount of \$328.80 for the month of November 2022.

14. 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 (13 March 2023) and a per diem thereafter. As shown in the calculations below, I therefore calculate the total arrears owing as at 13 March 2023 2022 to be \$3,255.50.

$\$1,250.00 \times 12 = \$15,000.00 / 365 = \$41.10$ for rent each day

$8 \times \$41.10 = \328.80 for rental credit from November 2022

$\$1,250.00 \times 3 = \$3,750.00$ Rent owed for December 2022 – February 2023

$\$41.10 \times 13 = \534.30 for rent for March 1 – 13, 2023

$\$3,750.00 + \$534.30 = \$4,284.30$ total possible rent owed

$\$4,284.30 - \328.80 (credit) - $\$700.00$ (payment) = $\$3,255.50$ actual rent owed

Decision

15. The landlord's claim for rent succeeds in the amount of \$3,255.50.
16. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$41.10, beginning 14 March 2023 and continuing to the date the landlord obtains possession of the rental unit.

Issue 2: Vacant Possession of Rented Premises

Landlord's Position

17. The landlord submitted a copy of a termination notice issued on 13 February 2023 with an effective date of 24 February 2023 (L#2). 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 text on the day it was issued. He also testified that he previously issued a section 19 termination notice to the tenant in December 2022, and January 2023, however copies of these other two notices were not provided.
18. According to the landlord's records, the tenant owed \$3,150.00 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 and the tenant remains in the premises.

Tenant's Position

19. The tenant acknowledged receipt of the 13 February 2023 termination notice and that she owes rent to the landlord.

Analysis

20. 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.

21. According to the landlord's records, on 13 February 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$3150.00 in rent. 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

22. The landlord's claim for an order for vacant possession of the rented premises succeeds.
23. 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: Security Deposit \$800.00
Relevant Submissions

24. The parties agreed that an \$800.00 security deposit was collected.

Analysis

25. 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.

26. 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 \$800.00 security deposit.

Decision

27. The landlord shall retain the full value of the \$800.00 security deposit.

Summary of Decision

28. The landlord is entitled to the following:

- To retain the full value of the \$800.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$2,455.50 determined as follows:
 - a) Rent..... \$3,255.50
 - b) LESS Security Deposit.....(\$800.00)
 - c) Total.....\$2,455.50
- An order for payment of a daily rate of rent in the amount of \$41.10, beginning 14 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.

16 March 2023

Date



Jaclyn Casler
Residential Tenancies Tribunal