

Residential Tenancies Tribunal

Applications: 2023 No. 0151 NL

Decision 23-0151-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:48 PM on 21 March 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", participated in the hearing, as did the respondent, [REDACTED], hereinafter referred to as "the tenant". She testified that she is participating on behalf of her spouse, and fellow tenant, [REDACTED].
3. Landlord1 referred to the affidavit of service (L#1) and confirmed that both tenants were served in person at their premises on 24 February 2023. The tenant confirmed service.
4. The details of the claim were presented as a month to month rental agreement that started May 2020. The landlords submitted a copy of the rental agreement they completed with the tenants after purchasing the premises in October 2021 (L#2). Current rent is set at \$700.00, POU due at the first of the month, and a security deposit in the amount of \$525.00 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:
 - Validity of Termination notice determined,
 - An order for rent to be paid in the amount of \$1,400.00;
 - 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 are sections 15, and 19 of the *Act*.

Preliminary Matters

9. The rental premises a 4 unit apartment located at [REDACTED]. Landlord1 referred to the unit occupied by the tenants as "Unit 2" while the tenant referred to it as "Unit C".
10. Landlord1 amended his application at the hearing and stated that he is now seeking \$2,100.00 in rent since it has not been paid for January – March 2023.

Issue 1: Payment of Rent (\$2,100.00)

Landlord's Position

11. Landlord1 referred to the rental ledger (L#3) submitted and testified that rent has not been paid for January 2023 (\$700.00), February 2023 (\$700.00), or March 2023(\$700.00). He testified that \$2,100.00 is owed in rent.

Tenant's Position

12. The tenant agreed they owe \$2,100.00 in rent and testified that she can pay rent for March 2023 in a few days.

Analysis

13. I accept the tenant and landlord's agree that \$2,100.00 is owing in rent through to 31 March 2023. I therefore find that rent is owed in that amount.

Decision

14. The landlords' claim for rent succeeds in the amount of \$2,100.00.

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

Landlord's Position

15. The landlords have assessed late fees in the amount of \$75.00 as there have been arrears on the tenant's account since at least 02 January 2023.

Tenant's Position

16. The tenant did not make a specific comment on the matter of late fees.

Analysis

17. 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.

18. 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.

19. Because there have been arrears on the tenants' account since at least 02 January 2023, I find that the landlords are entitled to payment of the maximum fee of \$75.00 as set by the minister.

Decision

20. The landlords' claim for late fees succeed in the amount of \$75.00.

Issue 3: Vacant Possession of Rented Premises

Validity of Termination Notice Determined

Landlord's Position

21. Landlord1 referred to a termination notice (L#4) issued on 26 January 2023 with a stated move out date of 08 February 2023. He stated that the notice was

served by email on the day it was issued and provided proof of email service (L#5). According to the landlords' records, the tenant owed \$700.00 in rent on the day the termination notice was issued. The landlords are seeking an order for vacant possession of the rented premises because arrears remain on the account.

Tenants Position

22. The tenant acknowledged the email used for service as her email, however, she testified that this account has been hacked and that she has not yet provided the landlords with a new email address. She stated that she has not yet received this termination notice.

Analysis

23. I reviewed the termination issued to the tenants and find there is an error. According to section 19 of the *Residential Tenancies Act, 2018*:

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.

(4) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the landlord;*

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

24. Specific to this dispute, I find that the termination notice issued to the tenants on 26 January 2023 is not a valid notice because the notice is addressed only to the civic address of [REDACTED], it does not contain the tenants' unit (e.g., Unit C as is written in the rental agreement). Consequently, the landlords' application for an order of vacant possession does not succeed.

Decision

25. The termination notice issued on 26 January 2023 is not a valid notice.

26. The landlords' claim for an order for vacant possession of the does not succeed.

Summary of Decision

27. The termination notice issued on 26 January 2023 is not a valid notice.

28. The landlords' claim for an order for vacant possession of the rental premises does not succeed.

29. The landlords are entitled to the following:

- An order for payment from the tenants in the amount of \$2,175.00 determined as follows:

a) Rent.....	\$2,100.00
b) Late Fees.....	\$75.00
c) Total.....	<u>\$2,175.00</u>

27 March 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal