

Residential Tenancies Tribunal

Applications: 2023 No. 0152 NL

Decision 23-0152-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:15 AM on 02 May 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.
3. An affidavit of service was provided by the landlord confirming that the tenant was served by registered mail of the claim on 22 March 2023 (L#1). Proof of purchase related to this service was provided (L#2), along with a photograph of the envelope addressed to the tenant at the rental premises (L#3). A review of the tracking number provided indicates that the package was not picked up by the tenant, however, subsection 42(6) of the *Residential Tenancies Act, 2018* considers items served by registered mail, to be served 5 days after the registered mail is sent.
4. The details of the claim were presented as a verbal, month-to-month rental agreement that started on or about September 2020. Current rent is set at \$1000.00 a month and a security deposit in the amount of \$200.00 was collected.
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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 \$2,500.00; 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* 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 him by telephone at [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 he has 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 his absence.
12. The landlord amended his application at the hearing and stated that he is now seeking a total claim of rent in the amount of \$5,500.00 for the three additional months that rent has not been paid since the application was filed in February 2023. The landlord is also seeking to retain the full value of the \$200.00 security deposit against monies owed by the tenant.

Issue 1: Payment of Rent (\$5,500.00)

Relevant Submissions

13. The landlord testified that he agreed to accept rent in two payments a month, and that no rent has been received from the tenant since the middle of December 2022. The landlord testified that he is currently owed \$5,500.00 in rent because only half rent was received for December 2022 (e.g., \$500.00) and no rent has been received for the past five months (e.g., January 2023 – May 2023).

Analysis

14. The landlord as the applicant is responsible for establishing the rate of rent and the tenant's payment history. I accept the landlord's testimony that the tenant has not paid rent since mid December 2022. Consequently, I agree that the tenant owed \$4,500 in rent as at 30 April 2022:
- December 2022 \$500.00
 - January 2023 \$1,000.00
 - February 2023 \$1,000.00
 - March 2023 \$1,000.00
 - April 2023 \$1,000.00
15. 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 (02 May 2023) and a per diem thereafter. I therefore calculate the total arrears owing as at 02 May 2023 to be \$4,565.76. This amount was arrived at through the following calculations:
- $\$1,000.00 \times 12 = \$12,000.00 / 365 = \$32.88$ per day
 - $\$32.88 \times 2 = \65.76 for May 1 - 2, 2023
 - $\$4,500 + \$65.76 = \$4,565.76$ for total possible rental arrears

Decision

16. The landlord's claim for rent succeeds in the amount of \$4,565.76.
17. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$32.88, beginning 03 May 2023 and continuing to the date the landlord obtains possession of the rental unit.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

18. The landlord submitted a copy of a termination notice issued on 06 February 2023 with an effective date of 17 February 2023 (L#4). 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 hand delivered on the day it was issued, provided in person to an occupant in the premises, and also posted above the mailbox. Proof of this notice being posted and texted to the tenant on 06 February 2023 was also provided to verify the date this notice was posted to the door (L#5).
19. According to the landlord's records, the tenant owed \$2500.00 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

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 06 February 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$2,500.00. 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

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 \$200.00 Relevant Submissions

24. The landlord testified that a \$200.00 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 of rent owing to the landlord exceeds the value of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$200.00 security deposit.

Decision

27. The landlord shall retain the full value of the \$200.00 security deposit.

Summary of Decision

28. The landlord is entitled to the following:

- To retain the full value of the \$200.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$4,365.76 determined as follows:
 - a) Rent..... \$4,565.76
 - b) LESS Security Deposit.....(\$200.00)
 - c) Total.....\$4,365.76
- An order for payment of a daily rate of rent in the amount of \$32.88, beginning 03 May 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.

03 May 2023

Date



Jaclyn Casler
Residential Tenancies Tribunal