

Residential Tenancies Tribunal

Applications: 2023 No. 0198 NL

Decision 23-0198-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:15 AM on 29 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 in the hearing.
3. An affidavit of service was provided by the landlord confirming that the tenant was served in person by a process server on 10 March 2023 (L#1).
4. The details of the claim were presented as a rental agreement that started on or about 01 April 2022. Current rent is set at \$800.00 a month and a security deposit in the amount of \$600.00 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 \$932.32; 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 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. This application was amended to include disposition of the \$600.00 security deposit against any monies found to be owing by the tenant.

Issue 1: Payment of Rent (\$932.32)

Relevant Submissions

13. The rental premises is located at [REDACTED]. The landlord submitted a copy of a rent ledger dated 20 February 2023 (L#3) and testified that the tenant owes \$932.32 in rent. She indicated that the tenant last had a credit on his account in May 2022 and that current arrears are a carry over from before government started paying his monthly rent in full.

Analysis

14. I accept the landlord's testimony and evidence and I find that the tenant owes \$932.32 in rental arrears as at 31 March 2023. Because however, the landlord is 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 (29 March 2023) and a per diem thereafter.
15. I therefore calculate the total arrears owing as at 29 March 2023 to be \$895.02. This amount was arrived at through the following calculations:

- $\$800.00 \times 12 = \$9,600.00/365 = \$26.30$ per day
- $\$26.30 \times 29 = \762.70 for March 1 - 29, 2023
- $800.00 - \$762.70 = \37.30 technical rental credit as of the day of hearing
- $\$932.32$ (persistent arrears) - $\$37.30 = \895.02 total arrears as of the day of hearing.

Decision

16. The landlord's claim for rent succeeds in the amount of \$895.02.
17. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$26.30, beginning 30 March 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 14 November 2022 with an effective date of 25 November 2022 (L#3). The notice was a custom termination under Section 19 of the *Residential Tenancies Act, 2018* with evidence of delivery by courier to the premises on the day the notice was issued (see page 2 in L#3).
19. According to the landlord's records, the tenant owed \$932.32 in rent on the day the termination notice was issued. The landlord testified that she 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 14 November 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$932.32. 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 \$600.00 Relevant Submissions

24. The rental ledger provides evidence of a \$600.00 security deposit (L#2).

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 \$600.00 security deposit.

Decision

27. The landlord shall retain the full value of the \$600.00 security deposit.

Summary of Decision

28. The landlord is entitled to the following:

- To retain the full value of the \$600.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$895.02 determined as follows:
 - a) Rent..... \$895.02
 - b) LESS Security Deposit.....(\$600.00)
 - c) Total.....\$295.02
- An order for payment of a daily rate of rent in the amount of \$26.30, beginning 30 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.

04 April 2023

Date



Jaclyn Casler
Residential Tenancies Tribunal