

Residential Tenancies Tribunal

Applications: 2023 No. 0225 NL

Decision 23-0225-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 10:07 AM on 11 April 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", 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 (L#1) confirming that the tenant was served electronically and by registered mail, with the claim. A review of the tracking number provided (L#2) with the affidavit indicates that the package was not sent in time to be considered adequate service under the Act because it was sent on 27 March 2023 and also not picked up. However, a review of electronic service (L#3) to [REDACTED] on 26 March 2023 confirms that the tenant was in fact provided with more than 10 days notice of the claim against him. The Landlords provided proof of Etransfer payments received from that same email address (L#4).
4. The details of the claim were presented as an intended fixed term rental agreement that started on 01 January 2023 for which a written rental agreement was provided (L#5). Monthly rent is set at \$1,450.00 and a security deposit in the amount of \$1,000.00 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 \$2,900.00;
 - 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 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 her application at the hearing and stated that she is now seeking a total claim of rent in the amount of \$4,350.00 for rent that is due and not paid for February through April 2023. Landlord1 also clarified that she is seeking to retain the full value of the \$1,000.00 security deposit against monies owed by the tenant.

Issue 1: Payment of Rent (\$4,350.00)

Relevant Submissions

13. The rental premises is a main floor apartment in a two unit building located at [REDACTED] [REDACTED]. The landlord testified that rent has not been received since January 2023 and she submitted proof of the \$1,450.00 payment received on 06 January 2023 (L#4). She testified that no further rent has been

received and that the tenant has not responded to communications since February 2023.

Analysis

14. I accept the landlord's testimony and evidence and I find that the tenant owed \$2,900.00 in rental arrears as at 31 March 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 (11 April 2023) and a per diem thereafter.
15. I therefore calculate the total arrears owing as at 11 April 2023 to be \$3,424.37. This amount was arrived at through the following calculations:
 - $\$1,450.00 \times 12 = \$17,400.00 / 365 = \$47.67$ per day
 - $\$47.67 \times 11 = \524.37 for April 1 – 11, 2023
 - $\$2,900.00 + \$524.37 = \$3,424.37$ for total possible rental arrears

Decision

16. The landlord's claim for rent succeeds in the amount of \$3,424.37.
17. The landlord is entitled to an order for payment of a daily rate of rent in the amount of \$47.67, beginning 12 April 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 February 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 February 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 with an issue date of 16 February 2023 and a stated move out date of 28 February 2023 (L#6). 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 served by email on 10 February 2023 and also posted to the tenant's door on 16 February 2023. Proof of email service on 10 February 2023 to [REDACTED] was provided and the landlord testified that she issued the notice dated 16 February 2023 at this same time (L#7).

24. According to the landlords' records, the tenant owed \$1,450.00 in rent on the day the termination notice was issued. The landlord are seeking an order for vacant possession of the rented premises because arrears remain on the account. Landlord1 testified that she knows the tenant remains in the premises because she had the police conduct a welfare check on him during the evening of 10 April 2023 after he failed to respond to communication efforts related to reports of water entering the rental premises below.

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 16 February 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$1,450.00. 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 \$1,000.00

Relevant Submissions

29. The rental ledger provides evidence of a \$1,000.00 security deposit (L#5).

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 \$1000.00 security deposit.

Decision

32. The landlord shall retain the full value of the \$1,000.00 security deposit.

Issue 5: Hearing Expenses

33. Landlord1 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

34. The landlords are entitled to the following:

- To retain the full value of the \$1,000.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$2,519.37 determined as follows:
 - a) Rent..... \$3,424.37
 - b) Late Fees..... \$75.00
 - c) Hearing Expenses\$20.00
 - d) **LESS Security Deposit.....(\$1,000.00)**
 - e) Total..... \$2,519.37
- An order for payment of a daily rate of rent in the amount of \$47.67, beginning 12 April 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.

18 April 2023

Date

[REDACTED]
Jaclyn Casler
Residential Tenancies Tribunal