

Residential Tenancies Tribunal

Applications: 2023 No. 0250 NL

Decision 23-0250-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:13 AM on 17 April 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "landlord1", participated in the hearing, as did his authorized representative (L#1), mother and property manager, [REDACTED], hereinafter referred to as "landlord2". The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.
3. An affidavit of service was provided by the landlords (L#2) confirming that the tenant was served by email and Facebook Messenger on 23 March 2023. Proof of email service to [REDACTED] was provided (L#3) and the tenant acknowledged service.
4. The details of the claim were presented as a six month fixed term agreement that started on 01 January 2023 (L#4). Monthly rent is set at \$1,800.00 including everything but electricity and a security deposit in the amount of \$900.00 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 landlords are seeking the following:
 - An order for rent to be paid in the amount of \$1,800.00;
 - An order for late fees; 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*.

Preliminary Matters

9. The rental premises a two unit apartment located at [REDACTED]. The tenant resides in the main floor unit. The tenant testified that he previously resided in the lower floor unit.
10. The rental agreement that started 01 January 2023 was signed by the tenant and a second tenant who is not named in this dispute. Landlord2 referred to a Facebook messenger conversation submitted where this other tenant writes on 15 February 2023 that she will be vacating (L#5), and landlord2 testified that she accepted this departure. The named tenant in this dispute was contradictory regarding this departure. He testified that he opposed being responsible for the full extent of the rent, however, he also provided proof after the hearing of his messages with landlord1 where he repeatedly explains his plans for paying the full amount of rent (T#1). Landlord1 also provided proof of text conversation with the tenant where he writes that this other tenant has been removed from the rental agreement (L#6).
11. Based on my review of these text conversations provided after the hearing by the tenant and the landlords, I accept that both parties recognized the lease was effectively amended in February 2023 and the tenant was solely responsible for rent from March 2023 onwards.
12. Landlord1 amended her application at the hearing and stated that she is now seeking a total claim of rent in the amount of \$3,600.00 to represent unpaid rent for March 2023 and April 2023. She also indicated that she is seeking late fees in the full amount of \$75.00. The landlords agreed that any claims for compensation for damages would need to be submitted at a later date and would not be considered during this hearing.

Issue 1: Payment of Rent (\$3,600.00)

Landlord's Position

13. The landlords did not submit a rent ledger. Landlord2 testified that rent for January 2023 and February 2023 was paid half by the tenant and half by the former tenant. Landlord2 acknowledged the tenant's claim that he reached out on 26 February 2023 asking if he could pay rent twice a month. She testified that she refused this request because landlord1 was already behind on his bills related to the rental premises. Landlord2 also testified that the tenant repeatedly texted that he would be paying rent, but he never did.

Tenant's Position

14. The tenant provided contradictory testimony. He originally testified that the former tenant paid rent and that he did not know what amount of rent was paid for March 2023. However, he also provided proof of text message conversations after the hearing indicating his awareness in early March 2023 that \$1,800.00 in rent is outstanding (T#1).

Analysis

15. The landlords as applicants are responsible for establishing the rate of rent and the tenant's payment history. Upon reviewing evidence of text message conversations provided after the hearing, I was able to verify the landlords' claim that tenant1 owed \$1,800.00 in rent as at 31 March 2023. Because the landlords are also seeking an order for vacant possession of the rented premises, I find that landlord1 as the property owner is entitled to a payment of rent to the date of the hearing (17 April 2023) and a per diem thereafter.
16. I therefore calculate the total arrears owing as at 17 April 2023 to be \$2,806.06. This amount was arrived at through the following calculations:
 - $\$1,800.00 \times 12 = \$21,600.00 / 365 = \$59.18$ per day
 - $\$59.18 \times 17 = \$1,006.06$ for April 1 – 17 2023
 - $\$1,006.06 + \$1,800.00 = \$2,806.06$ for total possible rental arrears

Decision

17. Landlord1's claim for rent succeeds in the amount of \$2,806.06.
18. Landlord1 is entitled to an order for payment of a daily rate of rent in the amount of \$59.18, beginning 18 April 2023 and continuing to the date he obtains possession of the rental unit.

Issue 2: Payment of Late Fees (\$00)

Relevant Submissions

19. Landlord2 has assessed late fees in an unspecified amount and argued that rent has been outstanding since 02 March 2023. She indicated during the hearing that she wished to charge the full value.

Analysis

20. 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.*

21. 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.

22. Because there have been arrears on the tenant's account since at least 02 March 2023, I find that the landlord is entitled to payment of the maximum fee of \$75.00 as set by the minister.

Decision

23. The landlord's claim for late fees succeed in the amount of \$75.00.

Issue 3: Vacant Possession of Rented Premises

Landlord's Position

24. Landlord2 submitted a copy of a termination notice with an issue date of 07 March 2023 and an effective date of 18 March 2023 (L#7). She testified that the notice was served by email and by text, however, she was unable to produce proof of either means of service. I gave leave until the end of the day for doing so. The notice was a standard notice of termination under Section 19 of the *Residential Tenancies Act, 2018*.

25. According to the landlords' records, the tenant owed \$1800.00 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 and the tenant remains in the premises.

Tenant's Position

26. The tenant testified during the hearing that he was not served with a termination notice on 07 March 2023. However, after the hearing he provided proof of his text message conversations with landlords1 including proof of landlord1 serving this termination notice on 07 March 2023 (T#2).

Analysis

27. 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.

28. According to the landlord's records, on 07 March 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$1800.00. 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

29. The landlords' claim for an order for vacant possession of the rented premises succeeds.
30. The tenant shall pay to the landlord any costs charged to the landlords 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 \$900.00

Relevant Submissions

31. The rental agreement provides evidence of a \$900.00 security deposit (L#4).

Analysis

32. 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.

33. As the amount owing to landlord1 for rent and late fees is in excess of the security deposit collected, I find that landlord1 is entitled to retain the full amount of the \$900.00 security deposit.

Decision

34. Landlord1 shall retain the full value of the \$900.00 security deposit.


Summary of Decision

35. Landlord1 is entitled to the following:

- To retain the full value of the \$900.00 security deposit.
- An order for vacant possession of the rented premises.
- An order for payment from the tenant in the amount of \$1,981.06 determined as follows:
 - a) Rent..... \$2,806.06
 - b) Late Fees.....\$75.00
 - c) **LESS Security Deposit.....(\$900.00)**
 - d) Total.....\$1,981.06
- An order for payment of a daily rate of rent in the amount of \$59.18 beginning 18 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


Jaclyn Casler
Residential Tenancies Tribunal