

Residential Tenancies Tribunal

Application 2023-0934-NL

Decision 23-0934-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 16-November-2023.
2. The applicant, [REDACTED], was not able to attend the hearing. The application for dispute resolution was completed by his son, [REDACTED], who submitted a copy of a duly witnessed Enduring Power of Attorney document naming the younger [REDACTED] as his father's attorney in the event of the elder [REDACTED] incapacity. A letter from a qualified medical professional was also provided (See LL#1). This letter, dated 23-August-2023, confirms that [REDACTED] does not have capacity. [REDACTED] and his wife, [REDACTED], attended the hearing by teleconference and presented at the hearing alongside her husband. An authorized representative form naming [REDACTED] has since been received. Hereinafter, the elder [REDACTED] will be referred to as the landlord. The landlord's son and his wife will be referred to hereinafter as the landlord's representatives.
3. The respondent, [REDACTED], and her mother [REDACTED], also attended by teleconference. The former will henceforth be referred to as the tenant. The tenant authorized her mother to speak on her behalf under oath.

Preliminary Matters

4. It was raised at the hearing that the landlord's representatives have no standing to claim for rent during the time before the date where the power of attorney took effect.
5. The enduring power of attorney provided gives the attorney the power to do anything on the landlord's behalf that the landlord can legally do by attorney. This includes the power to manage the landlord's real property as well as to initiate legal proceedings that are in the landlord's interest or thought to be in his interest. In this capacity, he may seek to recover any moneys owed that the landlord himself would be entitled to recover, be they past or present, subject to normal limitation periods.

Issues before the Tribunal

6. How much rent, if any, does the tenant owe the landlords?

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 (RTA)*.

Issue 1: Does the tenant owe rent?

Landlord's Position

8. The landlord's representatives submit that the tenant owes \$400 rent for each of the months of July, August, and September, and a late fee of \$75. A rental ledger was provided in support of this (LL#2). They say that the tenant moved in on 01-July-2023 and moved out on 08-September-2023. They also said they had a conversation with the tenant by phone on 25-August-2023 in which she said rent had been established as \$400 a month and she had not made any payments so far. They said the issue of work on the property in lieu of rent was never raised to them before the hearing. They say they feel that the landlord was being taken advantage of.

Tenant's Position

9. The tenant says that the agreement was that she would pay rent only once the property was "livable." She and her mother say that she did not move in until 28-July-2023, and while she had access to the property before that, it was used to do work and make the premises more livable. They add that the work they did on the property adds up to about \$1200, not including their own labour. The tenant submits that no rent is owed given the work that was done, and that they want to "call it even."

Analysis

10. Medical evidence was provided establishing that the landlord did not have capacity to make his own financial decisions as of 23-August-2023. No evidence was received suggesting that the landlord lacked capacity to enter into the agreement at the time it was reportedly entered into in July 2023. Therefore, in the absence of specific evidence suggesting otherwise, I conclude that at the time the rental agreement was made, the landlord had the capacity to make it.
11. The tenant is the only available witness to the original rental agreement. The only evidence presented that might be considered to contradict her account of the agreement regards a conversation she had with the landlord's representatives on 25-August-2023, in which they allege she made no mention of the agreement only taking effect once the premises was "livable." That alleged omission is not proof to the contrary, nor do I find it to undermine her credibility on this matter. I therefore accept the tenant's submission as to the terms of the rental agreement.

12. The valuation of the work done by the tenant is not strictly relevant to analysis of whether or not there is outstanding rent. No application has, at this time, been put before this tribunal that claims the landlord owes the tenant anything. In the absence of such an application it would be inappropriate to comment further.
13. In a claim for rent, the date the tenant moved in is highly relevant. The landlord's representatives submitted that the tenant moved in 01-July-2023. They were not in the province at that time and base their submission on a series of posts made by the tenant on Facebook, the social media website (LL#3). On 01-July-2023, the tenant posted a picture of a pickup truck with a mattress and other unidentified items in the cargo bed with the caption "Beat! Last load!! That makes 7 loads in 3 days in a van, truck, & trailer. Can't wait to shower & lay down already."
14. The tenant says that this was the day she finished moving from her previous apartment to her mother's house. That is consistent with all other evidence provided and I accept it as true. She further says she remained with her mother as they worked on fixing up the rental premises until she finally moved there on 28-July-2023. There are several more posts in LL#3 made between 01-July-2023 and 28-July-23. It suffices to say that they are consistent with the tenant's submissions.
15. I have found that the agreement was for rent to be paid once the premises were livable. The question then becomes if this threshold was reached, and when. I find that the premises were livable in the sense of the agreement on the date that the tenant chose to live there. It was not suggested that due to some emergency that the tenant had to leave her mother's house early. Her mother was clearly very supportive of her, and presumably she could have stayed there longer. Since she had a safe alternative it would not make sense for her to move into the premises when they were not livable, particularly given that she had her daughter with her.
16. The analysis now turns to the amount of rent due. The landlord claims for the entire month of July, August, and September, based on the fact that the tenant was present for at least part of each month. Under the *RTA*, a rental agreement need not run from the first to the last of each month. Any date may be used, with the term ending on the previous day of the next month. I asked the tenant if there was a term decided upon and she could not answer. Given the informality of the agreement, this is not surprising. I find that neither party turned their mind to the rental term. However, a tenant should be entitled to move in on the first day of a rental period. I therefore find that the effective rental term is from the 28th of each month to the 27th of the following month.
17. Based on the foregoing, the tenant owes \$400 rent for the period between 28-July-2023 to 27-August-2023. The tenant's occupation of the property continued after this date, but not for a full term. On 25-August-2023, the landlord's representatives told the tenant that she would need to leave by 01-September-2023. Later the tenant asked for an extra week and the landlord's representatives agreed. It is worth noting that a verbal termination notice is insufficient under the *RTA*, and the amount of notice given may have also been inadequate. However, parties agreed to the date of 08-September-2023 and the *RTA* allows for landlords and tenants to agree to alternative timelines regarding move out dates.

18. The tenant moved out on 08-September-2023. The tenant had proposed this date and the landlord's representatives agreed. Parties may agree to a reduced term and, when this happens, rent should be calculated per day. The period from 28-August-2023 to 08-September-2023 is 12 days. The correct formula for determining rent per day is rent per month, multiplied by 12 for the 12 months of the year, and divided by 365, or simply $\text{Rent} \times 12 / 365$. In this case, that works out to ~\$13.15 per day for a total of \$157.80.
19. Late fees have been set by the minister at \$5 for the first day, plus \$2 for each additional day, to a maximum of \$75. Rent was overdue for more than thirty days, so the maximum amount has been reached.

Decision

20. The landlord's claim for rent is made out. He is entitled to \$557.80 and \$75.00 in late fees for a total of \$632.80.
21. The landlord has also applied for costs. As his application was successful, he is entitled to these. In addition to the \$20 hearing fee, for which a receipt was provided (LL#4), the landlord claims for the expense of hiring a process server at the cost of \$181.95. A receipt was provided (LL#5).

Summary of Decision

22. The tenant shall pay the landlord \$834.75 as follows:

Rent	\$557.80
Late fee	\$75.00
Hearing expenses	\$201.95

Total \$834.75

08-December-2023
Date


Seren Cahill
Residential Tenancies Office