

## Residential Tenancies Tribunal

Applications: 2023 No. 0099 NL

Decision 23-0099-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 11:16 AM on 13 March 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2" participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", did not participate and were not represented at the hearing.
3. Two affidavits of service was provided by the landlords confirming that each tenant was served individually of the claim against then (L#1). Proof of service to tenant1 by email was provided along with proof of a prior text message confirming that tenant1 provided her email for tenancy related communication (L#2). Proof of service by text to tenant2 was provided along with previous texts confirming that the number used for service was previously used for tenancy related communication (L#3). Based on my review of this information, I concluded that both tenants were properly served notice of the landlords claim.
4. The details of the claim were presented as a month-to-month rental agreement that started on or about 01 March 2019. Monthly rent in the amount of \$850.00 included hydro and was due at the first of the month. A security deposit in the amount of \$425.00 was collected and 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 landlords are seeking the following:
  - An order for rent to be paid in the amount of \$1,700.00; 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 tenants were not present or represented at the hearing and I was unable to reach them by telephone at [REDACTED] or [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 they have been properly served.
11. As the tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
12. There were a series of amendments to this claim.
  - The landlords were informed that the tenants had vacated on 28 February 2023 and so an order of vacant possession is no longer required;
  - The claim for rent was increased to \$3,400.00 because rent has not been received for the months of December 2022, January 2023, February 2023 or March 2023.
  - Disposition of the \$425.00 security deposit has been added.

## Issue 1: Payment of Rent (\$3400.00)

### Relevant Submissions

13. The rental premises is a two unit apartment building located at [REDACTED]. The tenants resided in the main floor unit. Landlord2 testified that she received notice from the lower level tenants on 28 February 2023 that the main

floor tenants had vacated. She confirmed that the landlord then attended the premises on 03 March 2023 and found the keys left on the table.

14. Landlord1 testified that a termination notice was issued to the tenants in December 2022 and then issued again to the tenants in January 2023. A copy of this second notice was submitted (L#4). Landlord2 testified it was served by email on the date issued (28 January 2023) and the stated move out date was 08 February 2023. A copy of the tenant's rent ledger was also submitted (L#5), and landlord2 testified that they are seeking payment of rent in the amount of \$3,400.00 for rent that was not paid between December 2022 and 31 March 2023.

### **Analysis**

15. The landlords as applicants are responsible for establishing the monthly rate of rent and the tenants' payment history. Specific to this dispute, I accept the landlords issued a series of termination notices to the tenants after they stopped paying rent in December 2022. Regarding the landlord's exact entitlement to rent, I accept that they issued a termination notice to the tenants on 28 January 2023 requiring that the tenants vacate by 08 February 2023. I further accept that the landlords were informed on 28 February 2023 that the tenants had vacated. Consequently, I accept that the landlords are entitled to payment of rent in the monthly amount of \$850.00 for December 2022, January 2023 and February 2023 which means they are entitled to a total payment of \$2,550.00 (e.g., 3 x \$850.00).

### **Decision**

16. The landlord's claim for rent succeeds in the amount of \$2,550.00.

### **Issue 2: Security Deposit \$425.00** **Relevant Submissions**

17. Landlord1 testified that a security deposit in the amount of \$425.00 was collected.

### **Analysis**

18. 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.*

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*(12) A landlord who does not make an application in accordance with subsection*

*(11) shall return the security deposit to the tenant.*

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*(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.*

19. As the amount owing to the landlords succeeds in excess of the security deposit collected, I find that the landlords are entitled to retain the full value against monies owed.

## **Decision**

20. The landlord shall retain the full value of the \$425.00 security deposit.

## **Issue 5: Hearing Expenses**

21. The landlords claimed the \$20.00 expense of applying for this hearing. As their claim has been successful, the tenants shall pay this expense.

## Summary of Decision


22. The landlords are entitled to the following:

- To retain the full value of the \$425.00 security deposit.
- An order for payment from the tenant in the amount of \$2145.00 determined as follows:

a) Rent.....	\$2,550.00
b) Hearing Expenses .....	\$20.00
c) LESS Security Deposit.....	(\$425.00)
d) Total.....	<u>2,145.00</u>

21 March 2023

Date

  
Jaclyn Casler  
Residential Tenancies Tribunal