

Residential Tenancies Tribunal

Applications: [REDACTED]

Decision 23-0267-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:15 AM on 27 April 2023 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. He was represented by [REDACTED] hereinafter referred to as "the landlord's representative". The respondent, [REDACTED] hereinafter referred to as "tenant1" joined the hearing at 11:25 and represented the interests of [REDACTED] who is hereinafter referred to as "tenant2".
3. The landlord's representative provided an affidavit of service confirming that both tenants were served notice of this claim in person on 31 March 2023 (L#1). This service occurred at the rental premises. Because the landlord's representative testified that only one physical copy of the notice was served to the tenants who were both present at that time, she was asked if tenant2 was also served any other way. The landlord's representative then submitted proof of prior electronic service to tenant2 on 27 March 2023 via text at [REDACTED] (L#2). Tenant1 confirmed this is a phone number associated with tenant2.
4. The details of the claim were presented as a month-to-month rental agreement that started May 2022 and ended 01 April 2023. Monthly rent was set at \$900.00 and a security deposit in the amount of \$500.00 was collected. A copy of the written rental agreement was provided (L# 3).
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 \$2600.00;
 - An order to retain the full value of the \$500.00 security deposit;
 - Validity of a termination notice determined; 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 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The landlord's representative amended her application at the hearing and stated that she is seeking rent in the amount of \$3,500.00 to reflect the cost of rent that has since come due for April 2023. She also asked to claim costs related to damages, however, this request was denied since no damages were identified on the application form. Lastly, because the tenants previously vacated the rental premises on 01 April 2023, the landlord's requests for "validity of termination notice determined" and "Vacant Possession" were not considered.
10. The rental premises is a single family dwelling located at [REDACTED]
[REDACTED]

Issue 1: Payment of Rent (\$3,500.00)

Landlord's Position

11. The landlord's representative referred to a copy of a rent ledger submitted and testified that \$2,600.00 in rent was owing as at 01 April 2023 (L#4). She also requested that they be entitled to \$900.00 for rent for April 2023. However, she also confirmed that the property is currently for sale and they have made no attempts to re-rent it. The landlord's representative testified that the section 19 termination notice (L#5) issued on 22 March 2023 with an effective date of 02 April 2023 was served electronically and also posted to the tenants' door.

Tenants Position

12. Tenant1 agreed that \$2,600.00 is owed in rent.

Analysis

13. I accept that the tenants agree \$2,600.00 is owing in rent. With respect to the landlord's claim that an additional \$900.00 in rent be charged, I disagree because the landlord's issued a termination notice and the tenants vacated as required.

Decision

14. The landlord's claim for rent succeeds in the amount of \$2,600.00.

Issue 2: Security Deposit \$500.00

Relevant Submissions

15. The rental agreement provides evidence of a \$500.00 security deposit (L#3) and tenant1 testified that this money should be applied to rent owed.

Analysis

16. 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.

17. As the amount owing to the landlord for rent exceeds the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$500.00 security deposit.

Decision

18. The landlord shall retain the full value of the \$500.00 security deposit.

Issue 3: Hearing Expenses

19. The landlord's representative claimed the \$20.00 expense of applying for this hearing.

Summary of Decision

20. The landlord is entitled to the following:

- To retain the full value of the \$500.00 security deposit.
- An order for payment from the tenants in the amount of \$2,120.00 determined as follows:
 - a) Rent..... \$2600.00
 - b) Hearing Expenses\$20.00
 - c) LESS Security Deposit.....(\$500.00)
 - d) Total.....\$2,120.00

01 May 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal