

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0491-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:02 pm on 05 January 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. He was represented at the hearing by [REDACTED] from the law firm [REDACTED].
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 she has been properly served. The landlord submitted an affidavit with his application stating that the tenant had been personally served with notice of this hearing on 17 November 2020 and she has had 53 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

8. This is the second application the landlord had filed with this Tribunal concerning this tenancy. A previous application [REDACTED] was heard on 15 October 2020 and as a result of that hearing the landlord was awarded an order for a payment of rent in the amount of \$1744.60 up to 15 October 2020, as well as an order for a payment of a daily rate of rent of \$21.64 up to the date the tenant vacates the rented premises. His claim for an order for vacant possession of the rented premises did not succeed.

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

9. The landlord stated that he had entered into a monthly rental agreement with the tenant about 4 years ago. The current rent is set at \$660.00 per month.
10. It was determined in the previous hearing, held on 15 October 2020, that the tenant had been in arrears since 02 July 2020 and that she owed \$1420.00 up to the date of hearing. The landlord stated that he has received no rent from the tenant since that hearing and the rental arrears had continued to accumulate.
11. The landlord stated that on 15 October 2020 he issued the tenant a termination notice and a copy of that notice was submitted with his application. That notice was issued under section 19 of the Residential Tenancies Act, 2018 and it had an effective termination date of 26 October 2020. The landlord testified that he had sent that notice to the tenant via text-message, by e-mail, and that he had also posted a copy of it to her door.
12. The landlord stated that the tenant has not moved out as required and he is seeking an order for vacant possession of the rented premises.

Analysis

13. 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.

14. It was determined at the previous hearing that the tenant had been in rental arrears since 02 July 2020, and I accept the landlord's testimony that the tenant has paid no rent since that hearing.
15. As the landlord's termination notice meets all the timeframe requirements set out in section 19 of the Act, I find that it is a valid notice.

Decision

16. The landlord's claim for an order for vacant possession of the rented premises succeeds.
17. 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.

14 January 2021

Date

John R. Cook
Residential Tenancies Tribunal