

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0203-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:1 pm on 14 June 2021 via teleconference.
2. The applicants, [REDACTED], hereinafter referred to as "landlord1" and "landlord2", participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlords are seeking an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlords' Position

6. Landlord1 stated that they had entered into a monthly rental agreement with the tenant in April 2020. The agreed rent was set at \$995.00 per month and landlord1 stated that the tenant had paid a security deposit equivalent to half of the monthly rent.
7. No rent records were submitted with the landlords' application and they testified that they did not issue the tenant receipts for the rent payments. When the

tenant first moved in, the monthly rent was collected by their son and then turned over to the landlord. Since September 2020, the tenant was required to pay the rent by directly depositing that money into their bank account.

8. According to the landlords, since that time, the tenant has not been paying his rent as required. Landlord1 also complained that they were receiving direct payments into their bank account, but they were from a third party and they could not be sure if they were intended as rent payments for the tenant. In any case, landlord1 stated that if those payments were intended as the tenant's rent, he still has not been paying the full amount of rent each month.
9. She testified, for example, that no rent was paid for March 2021, that they had only received \$400.00 for April 2021, and that only \$500.00 was paid for May 2021. No rent was received for June 2021.
10. As the tenant had not been paying his rent, as required, the landlords issued the tenant a termination notice on 11 May 2021 and a copy of that notice was submitted with their application (█ #1). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 22 May 2021.
11. The landlords stated that the tenant has not vacated the rented premises as required and they are seeking an order for vacant possession of the rented premises.

The Tenant's Position

12. The tenant claimed that he had been paying his monthly rent, as required, and he denied that he had been making 3rd party payments but that he had been providing the bank with his credentials whenever he made a payment.
13. In support of his claim, the tenant pointed to his receipts (█ #1) from these direct payments which had been submitted in support of a separate application with this Board (2021 No. █).
14. The tenant claimed that he had paid his full rent for March 2021 and that he had also paid the remaining \$595.00 that the landlords had claimed that was owing for April 2021.
15. The tenant did acknowledge, though, that he had only paid \$500.00 in rent for May 2021 and he was able to identify a receipt for that payment. He also acknowledged that he had not paid his rent for June 2021.
16. The tenant also acknowledged that he had received the landlords' termination notice, as well as other notices, but he claimed that that notice was not valid as he had been paying his rent as required.

Analysis

17. 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.

18. The tenant acknowledged that he had only paid \$500.00 in rent for May 2021 and that no other payments have been made since.

19. Even if the tenant's rent had been fully paid and up-to-date for the period ending 30 April 2021, a point which the landlords contest, when the termination notice was issued on 11 May 2021, the tenant had, by his own admission, been in arrears for at least 5 days. He also conceded that he had made no rent payments since that \$500.00 payment on 05 May 2021.

20. Therefore, as the termination notice meets all the requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

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

22. 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.

15 June 2021

Date

