

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0227-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 am on 07 July 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. Her spouse, [REDACTED] also participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", was represented at the hearing by [REDACTED]

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$4943.00, and
 - b. 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*.

Preliminary Matters

7. The landlord amended her application and stated that she was now seeking a payment of rent in the amount of \$1300.00.

Issue 1: Rent - \$1300.00

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a rental agreement with the tenant in December 2016. On 01 January 2018 that agreement was committed to writing and a copy of that agreement was submitted with her application (████#1). The agreed rent was set at \$1330.00 per month.
9. The landlord stated that the tenant had been having trouble paying her rent during this tenancy and with her application she submitted a copy of her rent records showing the payments she had received from the tenant since March 2021 █████ #2).
10. According to these records, the tenant had only paid \$257.00 for March 2021 and no rent was paid for April or May 2021. █████ stated that on 01 June 2021 the tenant paid \$3000.00 to the landlord and on the following day, she paid another \$1973.00. Including the rent that came due on 01 June 2021, █████ stated that the tenant had a zero balance for the period ending 30 June 2021.
11. █████ stated that no rent was paid for July 2021 and the landlord is seeking an order for a payment of \$1300.00 for that month.

The Tenant's Position

12. █████ did not contest the landlord's claim for rent and he acknowledged that the tenant owed \$1300.00 for July 2021.

Analysis

13. The parties agreed that the rent of \$1300.00 owed for July 2021 had not been paid.
14. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter. I calculate the amount owing to be \$299.18 (\$1300.00 per month x 12 months = \$15,600.00 per year ÷ 365 days = \$42.74 per day x 7 days).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$299.18.
16. The tenant shall pay a daily rate of rent in the amount of \$42.74, beginning 08 July 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

17. With her application, the landlord submitted a copy of a termination notice [REDACTED] #3) which she stated was posted to the tenant's door on 06 May 2021.
18. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 May 2021.
19. The tenant has not moved out as required and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

20. [REDACTED] acknowledged that the tenant had received the termination notice on 06 May 2021. He testified that he was unaware that if the tenant had paid off the rental arrears within 10 days of receiving the notice that it would be cancelled.

Analysis

21. 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.

22. On 06 May 2021, the tenant was in arrears in the amount of \$3643.00 and had been in arrears since 02 March 2021. No payments were made to the landlord prior to the termination date of 17 May 2021.
23. As the termination notice meets all the requirements set out in section 19 of the Act, it is a valid notice.

Decision

24. The landlord's claim for an order for vacant possession of the rented premises succeeds.
25. 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.

Summary of Decision

26. The landlord is entitled to the following:
 - A payment of rent in the amount of \$299.18,
 - A payment of a daily rate of rent in the amount of \$42.74, beginning 08 July 2021 and continuing to the date the landlord obtains possession of the rental unit,
 - An order for vacant possession of the rented premises,
 - The tenant shall also 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.

08 July 2021

Date

