

Residential Tenancies Tribunal

Application 2022 No. 20NL

Decision 22-0020-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 10 March 2022 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 "the tenants", did not participate.

Issues before the Tribunal

3. The landlords are seeking the following:
 - An order for a payment of rent in the amount of \$1550.00, and
 - 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* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenants were not present or represented at the hearing and there was no telephone number available where they could be reached. 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 respondents

fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlords submitted an affidavit with their application stating that the tenants were served with the application, by registered mail, and the associated tracking history shows that the application was delivered on 18 February 2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

7. The landlords amended their application at the hearing and stated that they were now seeking a total claim of rent in the amount of \$3150.00.

Issue 1: Rent - \$3150.00

Relevant Submissions

8. Landlord2 stated that she had entered into a verbal rental agreement with the tenants on 29 October 2021. The agreed rent was set at \$800.00 per month and landlord2 stated that the tenants had paid a security deposit of \$500.00 on 15 October 2021.
9. Landlord2 testified that they have only received a total of 1 payment for rent from the tenants since they moved into the unit. They paid \$850.00 on 01 November 2021, covering the rent for November 2021, and the remaining \$50.00 was applied towards the rent for December 2021. No rent has been received since.
10. The landlords are seeking an order for a payment of the remaining rent that is owing for December 2021, \$750.00, as well as \$2400.00 for the months of January, February and March 2022—a total claim of \$3150.00.

Analysis

11. I accept landlord2's claim that the tenants have not paid rent as required, and I agree with her that the tenants owe \$3150.00 for the period ending 31 March 2022.
12. As the landlords are also seeking an order for vacant possession of the rented premises, I find that they are entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate the amount owing to be \$2613.00 (\$2350.00 for the period ending 28 February 2022 and \$263.00 for March 2022 (\$800.00 per month x 12 months = \$9600.00 per year ÷ 365 days = \$26.30 per day x 10 days = \$263.00)).

Decision

14. The landlords' claim for a payment of rent succeeds in the amount of \$2613.00.

15. The tenants shall pay a daily rate of rent in the amount of \$26.30, beginning 11 March 2022, and continuing to the date the landlords obtain vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

16. With their application, the landlords submitted a copy of a termination notice (LV #1) which landlord2 stated was sent to the tenant, by Facebook Messenger, on 31 December 2022. She also stated that that notice was personally delivered to the tenants on that same day. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 11 January 2022.
17. The landlords stated that the tenants have not moved out, as required, and they seeking an order for vacant possession of the rented premises

Analysis

18. 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.

19. On 31 December 2021, the day that notice was issued, the tenants were in arrears in the amount of \$750.00, and had been in arrears since the beginning of that month. No payments have been made since that notice was issued.
20. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is valid.

Decision

21. The landlords' claim for an order for vacant possession of the rented premises succeeds.
22. The tenants shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

Issue 3: Security Deposit

23. Landlord2 stated that the tenants had paid a security deposit of \$500.00 on 15 October 2021. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

24. With their application, the landlords submitted a hearing expense claim form and receipts showing that they had paid \$20.00 to file this application, \$14.88 to send the application to the tenants by registered mail, and \$28.75 to have their affidavit notarized.
25. As the landlords' claim has been successful, the tenants shall pay these hearing expenses (\$63.63).

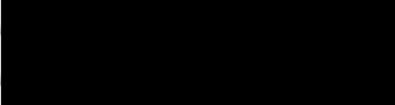
Summary of Decision

26. The landlords are entitled to the following:
 - A payment of \$2244.90, determined as follows:
 - a) Rent Owing\$2613.00
 - b) Hearing Expenses.....\$63.63
 - c) **LESS: Security Deposit.....(\$500.00)**
 - d) Total.....\$2176.63

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$26.30, beginning 11 March 2022 and continuing to the date the landlord obtains possession of the rental unit,
- The tenants shall also pay to the landlords 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.

11 March 2022

Date



John R. Cook
Residential Tenancies Tribunal