

Residential Tenancies Tribunal

Application 2022 No. 26NL

Decision 22-0026-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 15 February 2022 via teleconference.
2. The applicants and landlords, [REDACTED] and [REDACTED], were represented at the hearing by [REDACTED] ([REDACTED]). The respondent, [REDACTED] [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$750.00, and
 - An order for vacant possession of the rented premises,

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. 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 he has been properly served. [REDACTED] testified that she had personally served the tenant with notice of the hearing on 27 January 2022 and he has had 18 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 his absence.
5. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$3000.00.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. 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*.

Issue 1: Rent - \$3000.00

Relevant Submissions

8. █ stated that the tenant moved into the rental in August 2020 and the agreed rent was set at \$750.00. The landlords purchased the rental unit in November 2021 and it was agreed that the tenant would start paying his rent to them at the beginning of that month.
9. █ testified that since the landlords have taken over ownership of the unit, the tenant has paid them no rent at all. The landlords are seeking an order for a payment of rent in the amount of \$3000.00 for the months of November 2021, December 2021, January 2022 and February 2022.

Analysis

10. I accept the █'s claim that the tenant has not paid his rent as required, and I agree with her that the tenant owes \$3000.00 for the period ending 28 February 2022.
11. As the landlords are also seeking an order for vacant possession of the rented premises, I find that they entitled to a payment of rent to the date of the hearing and a per diem thereafter.
12. I calculate the amount owing to be \$2619.90 (\$2250.00 for the period ending 31 January 2022 and \$117.18 for February 2022 (\$750.00 per month x 12 months = \$9000.00 per year ÷ 365 days = \$24.66 per day x 15 days = \$369.90)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$2619.90.
14. The tenant shall pay a daily rate of rent in the amount of \$24.66, beginning 16 February 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

15. With her application, the landlords submitted a copy of a termination notice (█ #1) which █ stated was sent to the tenant, by e-mail, on 07 January 2022. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 18 January 2022.
16. The landlord stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises

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. On 07 January 2022, the day that notice was issued, the tenant was in arrears in the amount of \$2250.00, and he had been in arrears since the beginning of November 2021.
19. 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

20. The landlords' claim for an order for vacant possession of the rented premises succeeds.
21. 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.

Issue 3: Security Deposit

22. █ stated that the tenant paid a security deposit of \$375.00 when he moved into the unit in 2020 and that deposit was transferred to the landlords when they purchased the unit in November 2021. As the landlord's claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

23. The landlords are entitled to the following:
 - A payment of \$2244.90, determined as follows:
 - a) Rent Owing\$2619.90
 - b) LESS: Security Deposit.....(\$375.00)
 - c) Total.....\$2244.90
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$24.66, beginning 16 February 2022 and continuing to the date the landlord obtains possession of the rental unit,
 - 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.

17 February 2022

Date

John R. Cook
Residential Tenancies Tribunal