

Residential Tenancies Tribunal

Application 2022 No. 54NL

Decision 22-0054-06

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:51 PM on 14 February 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1200.00, and
 - An order for vacant possession of the rented premises.

Preliminary Matters

4. The landlord amended his application at the hearing and stated that he was now seeking a total of \$1800.00 in rent.

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*.

Issue 1: Rent - \$1800.00

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a monthly rental agreement with the tenant in October 2015. The current rent is set at \$600.00 per month.
8. The landlord stated that the tenant has not paid her rent for the months of September 2021, January 2022 and February 2022. He is seeking an order for a payment of \$1800.00 in rent for those 3 months.

The Tenant's Position

9. The tenant acknowledged that she had not paid her rent for those 3 months.
10. She testified that she has been dealing with a leak at the unit for the past 4 years which has caused black mold to form on the ceilings in her living room and kitchen. She stated she had spoken to the landlord about this issue on several occasions and he has yet to carry out the required repairs.
11. The tenant also claimed that she was informed that she was not required to pay her rent if the landlord had not begun the required repairs by the beginning of September 2021, and she stated that this was also her reason for withholding the rent for January and February 2022.

Analysis

12. I agree with the tenant that a landlord has a statutory obligation to maintain premises in a good state of repair, and failing to address the sorts of issues the tenant complained about at the hearing would be a violation of that statutory obligation.
13. However, the tenant acknowledged at the hearing that she had not served the landlord with any written notice that he was to carry out repairs, and, despite the advice she had been given, nothing in the *Residential Tenancies Act, 2018* authorizes a tenant to withhold rent until repairs are completed—that course of action may only be authorized by the Director after hearing a tenant's application on that matter. No such hearing has been held.
14. As such, and as there is no dispute that the tenant had not paid rent for those 3 months, the landlord's claim succeeds.
15. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter.

16. I calculate the amount owing to be \$1476.22 (\$1200.00 for the period ending 31 January 2022 and \$276.22 for February 2022 (\$600.00 per month x 12 months = \$7200.00 per year ÷ 365 days = \$19.73 per day x 14 days)).

Decision

17. The landlord's claim for a payment of rent succeeds in the amount of \$1476.22.
18. The tenant shall pay a daily rate of rent in the amount of \$19.73, beginning 15 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

The Landlord's Position

19. With his application, the landlord submitted a copy of a termination notice [REDACTED] #3) which he stated was delivered to the tenant, by his property manager, 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.
20. 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.

The Tenant's Position

21. The tenant acknowledged that, on 07 January 2022, the landlord's property manager had come to her door, was granted entry into her apartment, and informed the tenant that she was delivering a termination notice to her. The tenant stated that after she had refused to accept the notice, the property manager "threw" the notice into her vestibule. The tenant also testified that she had not read the notice that had been delivered to her.

Analysis

22. 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.

23. There is no dispute that on 07 January 2022, the landlord's property manager went to the tenant's unit and informed her that she was delivering to her a termination notice, and that, in her presence, that notice was left in the tenant's apartment. I do not accept the tenant's contention that as she did not touch, and did not read, that document that it therefore had not been given to her.
24. As that notice meets all the requirements set out in this section of the *Act*, and as I have determined that it was properly served, it is a valid notice. As such, the landlord's claim succeeds.

Decision

25. The landlord's claim for an order for vacant possession of the rented premises succeeds.
26. 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: Hearing Expenses

27. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

28. The landlord is entitled to the following:
- A payment of \$1496.22, determined as follows:
 - a) Rent Owing\$1476.22


b) Hearing Expenses.....\$20.00

c) Total.....\$1496.22

- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$19.73, beginning 15 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