

Residential Tenancies Tribunal

Application 2022 No. 129NL

Decision 22-0129-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 10 May 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing [REDACTED], hereinafter referred to as “the landlord”. The respondent, [REDACTED], hereinafter referred to as “the tenant”, was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$2450.00,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the \$350.00 security deposit.

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 are section 19 of the *Residential Tenancies Act, 2018*, and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. 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. The landlord testified that she had served the tenant, by e-mail and by text-message, on 24 February 2022, and copies were submitted by the landlord. 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.

7. The landlord amended her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$5275.00.

Issue 1: Rent - \$5275.00

Relevant Submissions

8. The landlord stated that when she had purchased the rental complex in April 2019, the tenant was already residing there, and had been since January 2019. In October 2020, a written rental agreement was drafted and signed, and a copy of that agreement was submitted with the landlord's application (█ #1). This agreement shows that the tenancy was running on a month-to-month basis and that the rent was set at \$575.00.
9. The landlord submitted rent records with her application (█ #2) showing the rent payments the tenant had made since July 2021. According to the landlord, the tenant had a rent credit of \$450.00cr on 30 June 2021. The records show that since that time, the tenant has only made 2 rent payments: \$600.00 on 01 November 2021 and \$1100.00 on 01 January 2022.
10. The landlord calculates that the tenant owes a total of \$5275.00 and she is seeking an order for a payment of that amount.

Analysis

11. I accept the testimony of the landlord in this matter and I find that, since July 2021, the tenant had only made 2 rent payments totalling \$1700.00.
12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that the landlord is entitled to a payment of rent to the date of the hearing, and a per diem thereafter.
13. I calculate that amount to be \$3789.00 (\$3600.00 owing for the period ending 30 April 2022 (10 months x \$575.00 per month, less the rent credit of \$450.00cr the tenant had at the end of June 2021, and less the 2 payments totalling \$1700.00) and \$189.00 for May 2022 (\$575.00 per month x 12 months = \$6900.00 per year ÷ 365 days = \$18.90 per day x 10 days)).

Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$3789.00.
15. The tenant shall pay a daily rate of rent in the amount of \$18.90, beginning 11 May 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

16. With her application, the landlord submitted a copy of a termination notice (█ #3) which she stated was sent to the tenant, by e-mail, on 03 February 2022. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 February 2022.
17. 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

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 03 February 2022, when the termination notice was issued, the tenant had been in arrears since July 2021, and no payments were made after the 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 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.

Issue 3: Security Deposit

23. The landlord stated that the tenant had paid a security deposit of \$350.00 when he moved into the unit and receipt of that deposit is acknowledged in the rental agreement that was drafted in October 2020. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.


Summary of Decision

24. The landlord is entitled to the following:
 - An order for a payment of \$3439.00, determined as follows
 - a) Rent Owing\$3789.00
 - b) **LESS: Security Deposit..... (\$350.00)**
 - c) Total.....**\$3439.00**
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$18.90, beginning 11 May 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.

13 May 2022

Date



John R. Cook
Residential Tenancies Tribunal