

Residential Tenancies Tribunal

Applications: 2022 No. 0170 NL

Decision 22-0170-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:16AM on 19 May 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED] and hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served of the claim against her.
5. The details of the claim were presented as fixed term agreement, signed 3 December 20212, with rent set at \$1,000.00 per month. As security deposit was collected in the amount of \$700.00. A copy of the written rental agreement was provided (L#2).
6. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The landlord is seeking the following:
 - An order for vacant possession.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also relevant and considered in this case is section 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. 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 she has been properly served.
12. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issue 1: Vacant Possession

Relevant Submissions

13. The landlord reviewed the copy of the rent ledger that was provided and stated that rent was not received for the months of March, April or May 2022, showing a balance of \$3,000.00 as of 19 May 2022 (L#3). Rent when it was paid previously, was paid by electronic transfer.
14. Because rent was not being paid, the landlord issued a termination notice under section 19 of the *Act* (L#4). This notice was issued on 5 April 2022 by email to the tenant using the email address provided on the rental agreement and used for communications with the landlord. The stated move out date was identified as 16 April 2022.
15. The landlord testified that the tenant has not paid their arrears and that they have not vacated as required. He is seeking an order for vacant possession of the rental premises.

Analysis

16. 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.

17. I accept the landlord's claim and evidence that the tenant has not paid their rent as required. According to his records, on 05 April 2022, the day the termination notice was issued, the tenant was in arrears of \$2000.00. No payments were made prior to the termination date of 16 April 2022.

18. 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

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

20. 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 Decision

21. The landlord is entitled to the following:

- 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.

19 May 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal