

Residential Tenancies Tribunal

Application 2022 No. 297NL

Decision 22-0297-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 09 June 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing [REDACTED] [REDACTED], hereinafter referred to as "the landlord". An employee of the landlord, [REDACTED] ("[REDACTED]"), also participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$6100.00, and
 - An order for vacant possession of the rented premises.

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*, and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

7. 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 he had personally served the tenant with the application on 27 April 2022, and he has had 43 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.

8. The landlord amended his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$5600.00.

Issue 1: Rent - \$5600.00

Relevant Submissions

9. The landlord stated that he had entered into a verbal rental agreement with the tenant on 15 February 2021. The agreed rent was set at \$650.00 per month, due on the 15th day of each month.
10. With his application, the landlord submitted a copy of his rent records (█ #1) showing the payments the tenant had made from the date he had moved into the unit, up to February 2022. During that 1-year period, the tenant only made 3 payments, totalling \$2350.00, and the landlord calculates that this left a balance owing of \$6100.00.
11. █ testified that since February 2022, the tenant has made 3 additional payments: \$1000.00 on 27 April 2022, \$1000.00 on 04 May 2022, and another \$700.00 on 19 May 2022. █ calculates that the tenant currently owes \$5600.00 and the landlord is seeking an order for a payment of that amount.

Analysis

12. I accept the testimony of █ in this matter and I find that the tenant has not been paying rent as required, and that since he has moved into unit, he has only paid a total of \$5050.00 (\$2350.00 + \$2700.00).
13. 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.
14. I calculate that amount to be \$5234.25 (\$5400.00 for the period ending 14 May 2022 (15 rental periods x \$650.00 per period = \$9750.00, less the payments totalling \$4350.00) less a credit of \$165.75cr for the rental period beginning 15 May 2022 (\$650.00 per rental period x 12 periods per year = \$7800.00 ÷ 365

days = \$21.37 per day x 25 days = \$534.25 less the payment of \$700.00 received on 19 May 2022)).

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$5234.25.
16. The tenant shall pay a daily rate of rent in the amount of \$21.37, beginning 10 June 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

17. With his application, the landlord submitted a copy of a termination notice that he stated was taped to the tenant's door on 12 April 2022 (█ #2). That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 23 April 2022.
18. 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.

Analysis

19. 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.

20. On 12 April 2022, when the termination notice was issued, the tenant was in arrears in the amount of \$6750.00, and had been in rental arrears since 02 March 2021.
21. No payments were made prior to the termination date of 23 April 2022 set out in that notice and on 15 April 2022, an additional \$650.00 in rent came due, bringing the total arrears to \$7400.00. Although the tenant did pay a total of \$2700.00 after 23 April 2022, those payments had no affect on the validity of the notice.
22. 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

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

25. The landlord is entitled to the following:
 - A payment of rent in the amount of \$5234.25.
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$21.37, beginning 10 June 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.

15 June 2022

Date

John R. Cook
Residential Tenancies Tribunal