

Residential Tenancies Tribunal

Application 2022 No. 305NL

Decision 22-0305-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 08 June 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred as "the landlord", participated in the hearing. A representative for her property management company, and owner of the property, [REDACTED] ("[REDACTED]"), was also in attendance.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

4. The landlord is seeking 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 her 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 she has been properly served. With her application, the landlord submitted an affidavit stating that tenant had been served with the application, by e-mail, 18 May 2022, and a copy of that e-mail was submitted with her application. 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 her absence.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 October 2021, and a copy of that executed agreement was submitted with her application (█ #1). The agreed rent was set at \$640.00 per month and that rent was being paid, on the tenant's behalf, by the Department of Children, Seniors and Social Development (CSS).
9. With her application, the landlord submitted a copy of her rent records showing the payments she had received from CSS since October 2021 (█ #2). According to those records, no payments were made for the months of December 2021, January 2022, February 2022 or March 2022, leaving the tenant with a balance of \$2560.00 at the end of March 2022.
10. Payments resumed on 01 April 2022, and the landlord received a double payment of \$1280.00 on that date from CSS. She also received the required rent for May and June 2022, and the landlord calculates that the tenant is currently in arrears in the amount of \$1280.00.
11. Because the landlord had not received her rent for the period from 01 December 2021 to 31 March 2022, she elected to terminate her rental agreement with the tenant.
12. With her application, the landlord submitted a copy of a termination notice that she stated was served on the tenant on 01 April 2022 (█ #3). █ testified that she had sent it to the tenant on that date, by e-mail, and the landlord stated that she had posted a copy of that notice to the tenant's door on that day as well.
13. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 12 April 2022.
14. 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

15. 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.

16. On 31 March 2022, the day before the notice was issued, the tenant was in arrears in the amount of \$2560.00 and had been in arrears since 02 December 2021. On 01 April 2022, the rent records show that the tenant was charged \$640.00 for rent for that month and these records also show that CSS had paid \$1280.00 on that date, on the tenant's behalf. With those amounts factored in, the tenant was in rental arrears in the amount of \$1920.00 at the end of the day, 01 April 2022, and not \$1280.00, as indicated on the landlord's records.
17. Be that as it may, the landlord received no payments from the tenant after the termination notice was issued, and on 12 April 2022, the effective termination date set out in the notice, the tenant remained in arrears.
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.

Issue 2: Hearing Expenses

21. The landlord paid a fee of \$20.00 to file this application. As the landlord's claim has been successful, she is authorized to retain \$20.00 of the security deposit to cover that hearing expense.

09 June 2022

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal