

## Residential Tenancies Tribunal

Application 2022 No. 443NL

Decision 22-0443-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:26 AM on 29 June 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", was also in attendance.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for a payment of rent in the amount of \$3800.00,
  - An order for a payment of \$500.00 for the security deposit, and
  - An order for vacant possession of the rented premises,

### 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 is section 19 of the *Residential Tenancies Act, 2018*.

### Issue 1: Rent - \$3800.00

#### Relevant Submissions

##### The Landlord's Position

6. The landlord stated that she had entered into monthly rental agreement with the tenant on 15 November 2021 and a copy of that executed agreement was submitted with her application. That agreement stated that the rent is set at \$1000.00 per month, due on the first day of each month. Although it is acknowledged in the agreement that the tenant had paid a security deposit of \$500.00, the landlord stated that no deposit was paid.
7. The landlord stated that the tenant had only made 4 rent payments during her tenancy, and with her application she submitted copies of 4 rent receipts she had issued to the tenant for those payments. \$800.00 was paid on 02 December 2021, \$600.00 was paid on 02 February 2022, \$300.00 on 02 March 2022, and a final payment of \$500.00 was paid on 29 April 2022.
8. The landlord calculates that the tenant owes her \$3800.00 for the period ending 30 April 2022 and she pointed out that no rent was paid for June 2022 either.

### The Tenant's Position

9. The tenant claimed that half the rent was due on the first of the month while the other half was due on the 15<sup>th</sup>. She also claimed that of the \$800.00 payment she had made on 02 December 2022, \$372.87 of that amount was to go towards the \$500.00 security deposit she was supposed to pay, and the rest was for rent. The tenant stated that she had agreed to pay the remaining \$200.00 of the security deposit, but her boyfriend lost his job.
10. The tenant acknowledged that, besides the \$800.00 she had paid in December 2021, she had only made those 3 other payments as recounted by the landlord.

### **Analysis**

11. There is no dispute that the tenant had only made those 4 payments to the landlord during this tenancy, a total of \$2200.00, while the amount of rent that is owing up to June 2022 is \$7000.00 (7 months x \$1000.00 per month), a difference \$4800.00.
12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate the amount owing to be \$4753.52 (\$3800.00 for the period ending 31 May 2022 (\$6000.00 - \$2200.00) and \$953.52 for June 2022 (\$1000.00 per month x 12 months = \$12,000.00 per year ÷ 365 days = \$32.88 per day x 29 days)).

### **Decision**

14. The landlord's claim for a payment of rent succeeds in the amount of \$4753.52.

15. The tenant shall pay a daily rate of rent in the amount of \$32.88, beginning 30 June 2022, and continuing to the date the landlord obtain vacant possession of the rented premises.

## **Issue 2: Vacant Possession of Rented Premises**

### **Relevant Submissions**

#### The Landlord's Position

16. With her application, the landlord submitted a copy of a termination notices that she stated was delivered to the tenant, by her boyfriend, █, sometime in March 2022. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 May 2022.
17. The landlords stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises.

#### The Tenant's Position

18. The tenant acknowledged that █ had delivered the notice to her, and she claimed that she had received it on 18 March 2022.

### **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 18 March 2022, the day the notice was served, the tenant was in arrears in the amount of \$2300.00 and had been in arrears since 02 December 2021. Between that date, and the date of termination, the tenant did make 1 payment of \$500.00, on 29 April 2022, but by that time, the rent for April 2022 had already come due, bringing the arrears to \$2800.00. And by 31 May 2022, the effective termination date set out in the notice, the arrears had climbed to \$3800.00.
21. As the notice meets all the requirements set out in this section of the *Act*, and as it was properly served, it is valid.

## **Decision**

22. The landlords' claim for an order for vacant possession of the rented premises succeeds.
23. The tenants shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

## **Issue 3: Security Deposit - \$500.00**

### **Relevant Submissions**

#### The Landlord's Position

24. The landlord stated that the tenant had not paid the required security deposit of \$500.00 and she is seeking an order for a payment of that amount.

#### The Tenant's Position

25. The tenant claimed that \$372.87 of the \$800.00 she had paid to the landlord on 02 December 2021 was for the security deposit, and that the remaining \$427.13 was for rent.

### **Analysis**

26. I pointed out to the landlord and the tenant at the hearing that if any portion of the \$800.00 payment made in December 2021 was for a security deposit, then the amount of rent that is owing would increase by that same amount. Furthermore, as the landlord's claim for vacant possession has succeeded, this tenancy is therefore ended, and I would have ordered the landlord to apply any deposit

against the amount that is owing. In effect, then, the issue of whether any portion of that \$800.00 was for the security deposit is moot.

27. I also pointed out to the landlord that it would also make no difference to the bottom line if I ordered the tenant to now pay to her any part of a security deposit as I would then have to order that that deposit be applied against the rent that is owing. Those 2 items would cancel themselves out.

### **Decision**

28. The landlord's claim for a payment of a security deposit does not succeed.

### **Summary of Decision**

29. The landlord is entitled to the following:

- A payment of rent in the amount of \$4753.52
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$32.88, beginning 30 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.

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05 July 2022

Date



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John R. Cook  
Residential Tenancies Tribunal