

Residential Tenancies Tribunal

Application 2022 No. 548NL

Decision 22-0548-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 02 August 2022 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlords are seeking the following:
 - An order for a payment of rent in the amount of \$1720.00, 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* 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 at the commencement of the hearing. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlords submitted an affidavit with their application stating the tenant was served with the application, by e-mail, on 19 July 2022, and a copy of that e-mail was also submitted with their application. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.

7. Although the tenant had filed an application with this Board—2022 No. 519NL—as he was not in attendance at the hearing to provide any evidence in support of his claim, that application was dismissed.
8. Landlord1 amended the application at the hearing and stated that they were now seeking a total claim of rent in the amount of \$800.00.

Issue 1: Rent - \$800.00

Relevant Submissions

9. Landlord1 stated that she had entered into a monthly rental agreement with the tenant on 01 January 2021 and a copy of that agreement was submitted with her application. The agreed rent was set at \$800.00 per month and it is acknowledged in the agreement that the tenant had paid a security deposit of \$400.00.
10. With their application, the landlords submitted a copy of their rent records, showing the payments the tenant had made since he moved into the unit. Landlord1 pointed out that the tenant last a zero balance on 03 March 2022. Since then, the tenant has only made 4 partial rent payments—\$400.00 was paid on 29 March 2022, \$280.00 on 02 May 2022, \$800.00 on 14 July 2022, and \$633.00 on 18 July 2022—leaving a balance of \$1087.00 for the period ending 31. The rent for August 2022 has also not yet been paid.
11. The landlords are seeking an order for a payment of rent in the amount \$1887.00 (\$1087.00 + \$800.00).

Analysis

12. I accept the landlords' claim that the tenant has not paid rent as required, and I agree with them that the tenant owes \$1887.00 for the period ending 31 August 2022.
13. As the landlords are also seeking an order for vacant possession of the rented premises, I find that they are entitled to a payment of rent to the date of the hearing and a per diem thereafter.

14. I calculate the amount owing to be \$1139.60 (\$1087.00 for the period ending 31 July 2022 and \$52.60 for August 2022 (\$800.00 per month x 12 months = \$9600.00 per year ÷ 365 days = \$26.30 per day x 2 days = \$52.60)).

Decision

15. The landlords' claim for a payment of rent succeeds in the amount of \$1139.60.
16. The tenant shall pay a daily rate of rent in the amount of \$26.30, beginning 03 August 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. Landlord1 stated that on 29 June 2022 she posted a termination notice to the tenant's door, and a copy of that notice was submitted with their application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 10 July 2022.
18. Landlord1 stated that the tenant has not moved out, as required, and they are 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 29 June 2022, the day that the notice was issued, the tenant was in arrears in the amount of \$1720.00 and had been in arrears since 02 April 2022. Although the landlords received 2 payments from the tenant in July 2022, totalling \$1433.00, those payments were not made before the termination date set out in the notice, and, in any case, they did not reduce the balance owing to zero.
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 tenant 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

24. According to the landlords' application, the tenant had paid a security deposit of \$400.00 on 01 January 2021, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

25. The landlords are entitled to the following:
 - A payment of \$739.60, determined as follows:
 - a) Rent Owing\$1139.60
 - b) **LESS: Security Deposit..... (\$400.00)**
 - c) Total.....\$739.60
 - An order for vacant possession of the rented premises,

- A payment of a daily rate of rent in the amount of \$26.30, beginning 03 August 2022 and continuing to the date the landlord obtains possession of the rental unit,
- The tenant shall also 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.

05 August 2022

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal