

Residential Tenancies Tribunal

Application 2022 No. 581NL

Decision 22-0581-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:07 AM on 10 August 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended the hearing. He was represented by [REDACTED] ("[REDACTED]"). 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 vacant possession of the rented premises; and
 - An order for payment of rent in the amount of \$1800.00.

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 are sections 19 and 29 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent Owing - \$1800.00

Relevant Submissions

The Landlord's Position

6. The landlord and tenant entered into a monthly rental agreement on 15 December 2021. The agreed rent is set at \$600.00 per month and that rent is

due on the 15th day of each month. █ also stated that the tenant had paid a security deposit of \$250.00 on 15 December 2021.

7. █ stated that the tenant's rent was paid and up-to-date for the rental period ending 14 May 2022, but she testified that no payments have been made since.
8. The landlord is seeking an order for a payment of \$1800.00 for the 3 rental periods beginning 15 May, 15 June, and 15 July 2022.

The Tenant's Position

9. The tenant acknowledged that she has not paid rent for these 3 rental periods.
10. The tenant claimed that her rental unit has a mold issue and it is infested with rodents, and she stated that she was withholding her rent because the landlord refused to address these issues, despite her repeated requests.
11. The tenant also pointed out that the landlord had not given her any receipts during this tenancy, for either her payments of rent or for the payment of the security deposit. She stated that she was informed that where a landlord does not provide these receipts, her obligation to pay rent is suspended.

Analysis

12. There is no dispute that the tenant has not paid her rent for the last 3 rental periods, ending 14 August 2022.
13. With respect to the maintenance issues the tenant complained of, I pointed out to the tenant at the hearing that a tenant cannot withhold rent, without an order from the Director, if she feels that the landlord has not been living up to his obligation to maintain the unit in a good state of repair. Rather, she must first give the landlord a written notice of the deficiencies, and if he does not rectify those issues within a reasonable period of time, she can either terminate her agreement, or, alternatively, file an application with this Section to have that matter adjudicated upon.
14. Regarding the issue of the receipts, section 14.(4) of the *Residential Tenancies Act, 2018* does state that a landlord is required to provide a written receipt for the security deposit, and, where requested, section 17.(3) states that a landlord is to provide a tenant with a receipt for any rent payment. But no section of the *Act* authorizes a tenant to withhold rent when these receipts are not provided.
15. As the landlord is also seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing and a per diem thereafter. I calculate the amount owing to be \$1732.71 (\$1200.00 owing for the rental period ending 14 July 2022 and \$532.71 for the rental period beginning 15 July 2022 (\$600.00 per rental period x 12 periods = \$7200.00 per year ÷ 365 days = \$19.73 per day x 27 days)).

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$1732.71.
17. The tenant shall pay a daily rate of rent in the amount of \$19.73, beginning 11 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

The Landlord's Position

18. With his application, the landlord submitted a copy of a termination notice which he stated he had placed in the tenant's door on 06 July 2022. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 17 July 2022.
19. 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.

The Tenant's Position

20. The tenant acknowledged that she had received the termination notice.
21. She argued that the landlord had issued this notice in retaliation to her complaints about the property and her repeated requests for repairs.

Analysis

22. 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.

23. According to the landlord's testimony, on 06 July 2022, the day the termination notice was issued, the tenant was in arrears in the amount of \$1200.00, and she had been in arrears since 16 May 2022. No payments were made by the tenant after the notice was issued, and since then the rent for the rental period beginning 15 July 2022 has also come due.
24. 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.
25. Regarding the tenant's allegation of retaliation, insufficient evidence was submitted at the hearing to establish that the termination notice was given because the tenant had made complaints about the maintenance issues at the unit. In any case, the only way a termination notice could be deemed to be invalid on those grounds would be if the tenant had filed her own application, within a month after the notice was issued, as contemplated under section 29 of the *Residential Tenancies Act, 2018*. The tenant has not filed such an application, and her time for doing so has come and gone.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. 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 3: Security Deposit

28. The landlord acknowledged that the tenant had paid a security deposit of \$250.00 on 15 December 2021, when the tenancy began. As the landlord's claim for rent has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

29. The landlord is entitled to the following:

- A payment of \$1482.71, determined as follows:
 - a) Rent Owing\$1732.71
 - b) LESS: Security Deposit.....(\$250.00)
 - c) Total.....\$1482.71
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$19.73, beginning 11 August 2022 and continuing to the date the landlord obtains vacant 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 August 2022

Date

John R. Cook
Residential Tenancies Tribunal

