

Residential Tenancies Tribunal

Application 2022 No. 586NL

Decision 22-0586-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:53 PM on 22 August 2022 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", respectively, also participated in the hearing.

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

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into monthly rental agreement with the tenants on 25 February 2022, and a copy of the executed rental agreement was

submitted with her application. The agreed rent is set at \$750.00, due on the first day of each month, and it is acknowledged in the rental agreement that the tenants had paid a security deposit of \$300.00.

8. The landlord submitted rent records with her application and she pointed out that rent was paid and up-to-date for the period ending 31 July 2022. However, no rent was paid for the month of August 2022.
9. Because the landlord had not received the rent for August 2022, she issued the tenants a termination notice, by e-mail, on 09 August 2022. A copy of that notice, as well as the e-mails she had sent to the tenants, were submitted with her application. The landlord testified that this was the third notice she had issued to the tenants for failure to pay rent.
10. The notice that she had sent to the tenants was issued under section 19 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 21 August 2022.
11. The landlord stated that the tenants have not moved out, as required, and she is seeking an order for vacant possession of the rented premises.

The Tenants' Position

12. Tenant2 acknowledged that she had received the termination notice. She claimed that she was looking to get her name removed from the rental agreement, and the landlord had informed her that she would send to her a form so that she could be taken off the lease, leaving tenant1 as the sole leaseholder. Instead of sending her that form, though, the landlord had sent her this termination notice.
13. With respect to the rent, tenant2 stated that she will be paying that rent to the landlord, as she had done each month, but she argued that tenants have a right to withhold rent, under the *Residential Tenancies Act, 2018*, while awaiting the outcome of a hearing.
14. Tenant1 stated that the reason he had been late with the rent in the past was because he was having banking issues and he claimed that his bank has been a "victim of a fraud scam".
15. Tenant1 also stated that ice would build up on the eavestrough in the winter and he argued that this was a safety hazard.

Analysis

16. 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.

17. There is no dispute that the tenants had not paid rent for August 2022, and I accept the landlord's claim that she had issued them previous notices for the same issue.
18. Nothing in the *Act* authorizes tenants to withhold rent, whether that be for maintenance issues, or while they are awaiting the outcome of a hearing.
19. As the tenants had been in rental arrears for over 5 days when the notice was issued, and as it meets all the other requirements set out in the section of the *Act*, I find that it is a valid notice.

Decision

20. The landlord's claim for an order for vacant possession of the rented premises succeeds.
21. 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

22. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the landlord is authorized to retain \$20.00 of the security deposit.

Summary of Decision

23. The landlord is entitled to the following:
- An order for vacant possession of the rented premises,
 - The tenants 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.
 - The landlord is authorized to retain \$20.00 of the security deposit.

26 August 2022

Date



John R. Cook
Residential Tenancies Tribunal