

Residential Tenancies Tribunal

Application 2022 No. 696NL

Decision 22-0696-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 07 September 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate.

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 \$1500.00.

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 is 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 her by telephone at the start 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 the 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. The landlord submitted an affidavit with his application stating that he had served the tenant, by Xpresspost, on 17 August 2022. The associated tracking history shows that the tenant never did collect that mail, but according to section 42.(6) of the *Residential Tenancies Act, 2018*, it is nonetheless considered served on the fifth day after mailing—22 August 2022. 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.

7. The landlord amended his application at the hearing and stated that he was now seeking a total of \$3000.00 in rent.

Issue 1: Rent Owing - \$3000.00

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant on 01 June 2021, and when that lease expired on 31 May 2022, it reverted to a month-to-month tenancy. The agreed rent is set at \$1500.00, due on the 1st day of each month, and the landlord testified that the tenant had paid a security deposit of \$1100.00 on 01 June 2021.
9. The landlord stated that the tenant's rent was paid and up-to-date for the period ending 31 July 2022, but he testified that no rent was paid for either August or September 2022.
10. The landlord is seeking an order for a payment \$3000.00 in rent for those 2 months.

Analysis

11. I accept the landlord's claim that rent had not been paid, as required, and that the tenant is currently in arrears in the amount of \$3000.00 for the period ending 30 September 2022.
12. 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 \$1845.24 (\$1500.00 for the period ending 31 August 2022 and \$345.24 for September 2022 (\$1500.00 per month x 12 months = \$18,000.00 per year ÷ 365 days per year = \$49.32 per day x 7 days)).

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13. The landlord's claim for a payment of rent succeeds in the amount of \$1845.24.

14. The tenant shall pay a daily rate of rent in the amount of \$49.32, beginning 08 September 2022, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

15. With his application, the landlord submitted a copy of a termination notice which he stated he had placed in the tenant's mailbox on 10 August 2022. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 August 2022.
16. 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.

Analysis

17. 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.

18. According to the landlord's testimony, on 10 August 2022, the day the termination notice was issued, the tenant was in arrears in the amount of

\$1500.00, and she had been in arrears since the beginning of that month, a period of 8 days. No rent payments were made after that notice was issued and since then, rent for September 2022 has also come due.

19. 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

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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 3: Security Deposit

22. The landlord stated that the tenant had paid a security deposit of \$1100.00 on 01 June 2021. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

23. The landlord submitted a hearing expense claim form with his application, as well as a receipt for \$20.00 for the costs of filing this application and a receipt for \$20.64 for the costs of sending the application to the tenant by Xpresspost. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

24. The landlord is entitled to the following:
- A payment of \$785.88, determined as follows:

a) Rent Owing	\$1845.24
b) Hearing Expenses.....	\$40.64
c) LESS: Security Deposit.....	(\$1100.00)
d) Total	<u>\$785.88</u>
 - An order for vacant possession of the rented premises,

- A payment of a daily rate of rent in the amount of \$49.32, beginning 08 September 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.

12 September 2022

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal