

Residential Tenancies Tribunal

Application 2022 No. 852NL

Decision 22-0852-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:15 PM on 14 December 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 not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for vacant possession of the rented premises;
 - An order for payment of rent in the amount of \$450.00; and
 - Authorization to retain the security deposit.

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*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. 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) respondent to an application must be served with 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 he has been properly served. With his application, the landlord submitted an affidavit stating that the tenant had been served with the application, by e-mail, on 02 December 2022, and a copy of that e-mail was submitted with his application. 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 his absence.

7. The landlord amended his application at the hearing and stated that he was now seeking a total of \$2250.00 in rent.

Issue 1: Rent Owing - \$2250.00

Relevant Submissions

8. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant on 19 February 2022, and a copy of that lease was submitted with his application. The agreed monthly rent was set at \$700.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$525.00.
9. With his application, the landlord submitted a copy of his rent records showing the payments the tenant had made since he moved into the unit. The landlord pointed out that since the tenant moved in, he never paid his rent on time, and he usually paid each month's rent in several installments.
10. According to the landlord's records, the tenant only paid \$300.00 in July 2022, and no rent was paid in August 2022. September's rent was paid, and the landlord testified that the last, and only, payment he had received after September 2022 was \$300.00, on 28 October 2022. No rent was paid for November or December 2022.
11. The landlord calculates that the tenant owes him \$2250.00 in rent for the period ending 31 December 2022, and he is seeking an order for a payment of that amount.

Analysis

12. I accept the landlord's claim that the tenant had not paid his rent as required, and that he has not received any rent for that past 2 months. On my review of the landlord's rent records, the tenant had a credit of \$240.00cr at the end of June 2022, and since then the arrears started to accrue incrementally. He owed \$110.00 at the end of July, \$810.0 at the end of August, and then \$700.00 at the end of September. Only \$300.00 was paid for October 2022, bringing the balance to \$1100.00 at the end of that month. No payments were made for November or December, bringing the balance owing to \$2500.00 for the period ending 31 December 2022.

13. However, 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 that amount to be \$2122.14 (\$1800.00 for the period ending 30 November 2022 and \$322.14 for December 2022 (\$700.00 per month x 12 month = \$8400.00 per year ÷ 365 days = \$23.01 per day x 14 days)).

Decision

14. The landlord's claim for an order for a payment of rent succeeds in the amount of \$2122.14.
15. The tenant shall pay a daily rate of rent in the amount of \$23.01, beginning 15 December 2022 and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

16. With his application, the landlord submitted a copy of a termination notice which he stated he had sent to the tenant, by e-mail, on 14 October 2022. That notice was issued under section 19 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 26 October 2022.
17. 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

18. 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.

19. On 14 October 2022, when the termination notice was issued, the tenant was in arrears in the amount of \$1400.00, and had been in rental arrears since 02 July 2022. Although the tenant made a payment of \$300.00 on 28 October 2022, 2 days past the effective termination date set out in the notice, he still had a balance of \$1100.00, and since then the rent for November and December 2022 has also come due.
20. 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.

Decision

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. 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

23. The landlord stated that the tenant had paid a security deposit of \$525.00 on 19 February 2022, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

24. The landlord is entitled to the following:

- A payment of \$1597.14, determined as follows:
 - a) Rent Owing\$2122.14
 - b) LESS: Security Deposit..... (\$525.00)
 - c) Total.....\$1597.14
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$32.01, beginning 15 December 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.

20 December 2022

Date


John R. Cook
Residential Tenancies Tribunal