

Residential Tenancies Tribunal

Application 2022 No. 1025NL

Decision 22-1025-00

Michael G. Greene
Manager of Residential Tenancies

Introduction

1. The hearing was called at 9:00 am on 15 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", participated in the hearing.

Issues before the Tribunal

3. The landlord is seeking the following:
 - 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 2(g)(h), 3(3) and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenant, at the onset of the hearing, raised a question if indeed this situation was a landlord and tenant relationship. This point is an important point for the jurisdiction of this tribunal and this point will be addressed in advance of any determination on the request for vacant possession.

Issue 1: Jurisdiction of this tribunal

Relevant Submissions

Landlord Submission

7. The landlord stated that this arrangement commenced on December 25, 2020 when he invited his son up for Christmas. It was his expectation that his son would stay for a couple days. The landlord indicated that his son had asked if he could stay for the short term.
8. The landlord has stated that there was a verbal rental agreement with rent set at \$600.00 per month. He further indicated that only \$1100.00 has been paid to date yet the respondent has remained there. The landlord indicated that it was his position that this is indeed a landlord and tenant relationship.

Tenant Submission

9. The tenant in this matter disagreed that there was any sort of rental agreement in place. He did indicate that he was at the property on Christmas day in 2020 and stayed for a few days. He then asked his father if he could stay and did indicate that he would assist financially. He indicated that he did this because his cat was ill and required medical treatment. The result was a choice between rent and his own place or his cat. Once he was living in the property, he ended up with some medical concerns.
10. Both parties acknowledge that the respondent has paid a total of \$1100.00 to the applicant to date.

Analysis

11. There is no doubt that this is an example of what is often referred to as renting from family. The fact that one is staying with family does not automatically mean that it is not a landlord and tenant relationship.
12. In this matter, both parties originally had their own living accommodations separate from each other. Because of life events, things changed and the two ended up together under the roof of the father (applicant in this case).
13. The question of jurisdiction if this can be considered a landlord and tenant relationship as defined by section 3(3) of the *Residential Tenancies Act, 2018* which reads:

Application of Act

3. (1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.

(2) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies to residential premises, residential complexes and rental agreements, whether made before or after this Act comes into force.

(3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant

(a) uses or occupies residential premises and

(i) has paid or agreed to pay rent to the landlord, or

(ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;

(b) makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or

(c) has used or occupied residential premises and

(i) has paid or agreed to pay rent to the landlord, or

(ii) a governmental department or agency has paid or agreed to pay rent to the landlord.

14. It has been determined above that both parties discussed the respondent staying at the property. We also know that there was a total payment of \$1100.00 from the respondent and that he has continued to use the property from December 25, 2020 to present.
15. Based on this, I accept that the criteria to establish a landlord and tenant relationship as been satisfied and therefore, this tribunal will seize jurisdiction on this matter and render its decision below.

Decision

16. This tribunal does have jurisdiction to adjudicate this matter.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

Landlord submissions:

17. With his application, the landlord submitted a copy of a termination notice which he stated he had provided to the tenant, personally on 26 October 2022. That

notice was issued under section 19 of the *Residential Tenancies Act, 2018*, and it had an effective termination date of 06 November 2022 (Exhibit L # 1).

18. The landlord stated that the tenant has not paid rent and has not moved out, as required, and he is seeking an order for vacant possession of the rented premises.

Tenant submissions:

19. The tenant has acknowledged receiving the termination notice from the landlord and has acknowledged only paying a total of \$1100.00 since December 25, 2020.
20. The tenant went on to indicate that he does make a mess at the property and does eat a lot of food. He indicated he wasn't expecting to stay but his cat got sick and he wanted to treat the cat.

Analysis

21. 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.

22. On 26 October 2022, when the termination notice was issued, the tenant was in arrears, and had been in rental arrears since early in 2021.
23. 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

24. The landlord's claim for an order for vacant possession of the rented premises succeeds.
25. 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: Hearing Expenses

26. The landlord is seeking expenses related to the application. The landlord presented a receipt for the application fee of \$20.00 (Exhibit L # 2). The landlord was granted leave at the hearing to submit a receipt for the Commissioner services but failed to submit the receipt by the writing of this report, as such, it will not be considered. As the landlord's claim has been successful, the tenant shall compensate the landlord for the expenses incurred in the amount of \$20.00

Summary of Decision

27. The landlord is entitled to the following:
 - A payment of \$20.00, determined as follows:
 - a) Hearing expenses\$20.00
 - An order for vacant possession of the rented premises,
 - 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.

30 December 2022

Date

Michael G. Greene
Residential Tenancies Tribunal