

Residential Tenancies Tribunal

Application 2022 No. 1089NL

Decision 22-1089-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:05 PM on 26 January 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended 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, and
 - An order for payment of rent in the amount of \$1900.00.

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. I was able to reach her by telephone, but the line was disconnected after I declined her request for a postponement. 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 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 e-mail, on 13 January 2023, 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.

Issue 1: Rent Owing - \$1900.00

Relevant Submissions

7. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant, commencing 01 April 2022. The agreed rent was set at \$950.00 per month, payable in 2 installments of \$475.00, due on the 1st and 15th days of each month. He also testified that the tenant had paid a security deposit of \$475.00 when she moved in.
8. The landlord stated that in November 2022, the tenant paid her first installment of \$475.00 for that month, but he testified that he was not paid the second installment, and that no payments were made for December 2022, leaving a balance of \$1425.00 for the period ending 31 December 2022.
9. The tenant also missed her rent payments that were due on 01 and 15 January 2023, but he testified that within the last week the tenant has paid him a total of \$900.00, leaving the balance at \$1425.00. He is seeking an order for a payment in that amount.

Analysis

10. I accept the landlord's testimony in this matter, and I agree with him that the tenant owes \$1425.00 for the period ending 31 January 2023. 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.
11. I calculate the amount owing to be \$1294.34 (\$1425.00 for the period ending 31 December 2022, less a credit of \$130.66cr for January 2023 (\$900.00 per month x 12 months = \$10,800.00 per year ÷ 365 days = \$29.59 per day x 26 days = \$769.34, less the 2 payments of \$475.00)).

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$1294.34.

13. The tenant shall pay a daily rate of rent in the amount of \$29.59, beginning 27 January 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

14. With his application, the landlord submitted a copy of a termination notice which he stated he had sent to the tenant, by text-message, on 07 January 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 20 January 2023.
15. The tenant has not moved out of the rented premises as required, and the landlord is seeking an order for vacant possession of the rented premises.

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. According to the landlord's testimony, on 07 January 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$1900.00, and she had been in arrears since 16 November 2022. Although the landlord had received a total of \$900.00 in rent payments from the tenant since the notice was issued, she did not bring the balance down to zero, and the rent for 15 January 2023 has also since come due.
18. 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

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

21. The landlord testified that the tenant had paid a security deposit of \$475.00 when she moved into the unit in April 2022. 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

22. The landlord is entitled to the following:
 - A payment of \$819.35, determined as follows:
 - a) Rent Owing\$1294.34
 - b) **LESS: Security Deposit.....(\$475.00)**
 - c) Total.....\$819.34
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$29.59, beginning 27 January 2023 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.

26 January 2023

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal