

Residential Tenancies Tribunal

Application 2022 No. 1100NL

Decision 22-1100-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 31 January 2023 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for vacant possession of the rented premises, and
 - An order for payment of "other expenses", totalling \$401.75.

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 is section 19 of the *Residential Tenancies Act, 2018*, and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

7. The tenant was not present or represented at the hearing. I telephoned him at the commencement of the hearing, and before the line was disconnected, he informed me that he did not wish to participate. 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 he has been properly served. The landlord submitted an affidavit with her application stating that she served the tenant, by registered mail, and the associated tracking history shows that it was signed for, by the tenant, on 23 December 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 his absence.

8. The landlord amended her application at the hearing and stated that she is now seeking \$199.75 in "other expenses".

Issue 1: "Other" Expenses - \$199.75

Relevant Submissions

9. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 June 2022. The agreed monthly rent is set at \$860.00 per month, and the landlord testified that the tenant had paid a security deposit of \$430.00.
10. On 14 September 2022, an inspection of the tenant's rental unit was carried out by a pest control company, and it was determined that the tenant had a "medium-heavy" infestation of bedbugs in his unit. The landlord stated that the pest control company also carried out a "cloverleaf" inspection on the adjoining apartments to assess whether the bedbugs had entered from another unit. No bedbugs were found in these other units, and it was determined that the tenant's unit was "ground zero" for the infestation.
11. On 28 September 2022, this pest control company was hired by the landlord to carry out a bedbug treatment of the tenant's apartment, and with her application the landlord submitted an invoice showing that she was charged \$401.75. On 08 November 2022, the landlord sent a notice to the tenant requiring that he pay that amount, and they verbally agreed that the tenant would pay \$100.00 per month. The landlord testified that the tenant had paid \$100.00 of that amount on 02 December 2022, and another \$100.00 on 28 December 2022. No payments have been made since.
12. The landlord calculates that the tenant owes \$199.75 towards that bedbug treatment and she is seeking an order for a payment of that amount.

Analysis

13. I accept the landlord's claim that the tenant is responsible for the bedbug infestation in his unit, and I also agree with her that he is therefore responsible for the costs of having his unit treated.
14. As the tenant had only paid \$200.00 towards the amount owing, I find that the landlord is entitled to payment of \$201.75.

Decision

15. The landlord's claim for a payment of rent succeeds in the amount of \$201.75.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

16. At the hearing, the landlord submitted a copy of her rent records, showing the payments she had received from the tenant since May 2022. These records show that \$699.00 of the tenant's monthly rent is paid by Newfoundland Labrador Housing (NLH), and the tenant pays the remaining \$161.00 himself each month.
17. According to these records, on 01 November 2022, the tenant had a zero-balance, but on 09 November 2022, the landlord added in the charge of \$401.75 for the bedbug treatment, leaving that amount as the balance owing. After that charge was added in, no payments were made until 30 November 2022—the \$699.00 from NLH, for December's rent.
18. As the tenant was carrying a balance during November 2022 that the tenant had made no payments towards, on 17 November 2022 the landlord issued him a termination notice, a copy of which was submitted with her application. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 29 November 2022.
19. The landlord stated that the tenant has not vacated the rented premises as required and she is seeking an order for vacant possession.

Analysis

20. 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.

21. And according to section 2.(g) of this Act,

Definitions

2. In this Act

...

(g) "rent" means money or other value paid, or required to be paid under a rental agreement, by a tenant to a landlord before or during the use or occupancy of a residential premises for the use or occupation of the residential premises and includes

(i) an amount payable for the use of furniture contained in the residential premises,

(ii) an amount payable for the cost of utilities,

(iii) a fee assessed under section 15, and

(iv) a payment made to a landlord on the sale of a mobile home including

(A) a payment for the right to use or occupy the land, and

(B) a fee charged to connect a mobile home to a service or a facility;

22. Although I agree with the landlord that the tenant owes her for the costs of the bedbug treatment, those costs do not fall within the meaning of "rent" as defined in section 2.(g), quoted above. When those costs, then, are removed from the

rent ledger, the tenant actually had a zero-balance when the termination notice was issued on 17 November 2022.

23. As the tenant was not in rental arrears for a period of 5 days when the notice was issued, it is not a valid notice.

Decision

24. The termination notice issued to the tenant on 17 November 2022 is not a valid notice.
25. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Summary of Decision

26. The landlord is entitled to a payment of \$201.75 for the remaining costs of the bedbug treatment.
27. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

31 January 2023

Date


John R. Cook
Residential Tenancies Tribunal