

Residential Tenancies Tribunal

Application 2023 No. 78NL

Decision 23-0078-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:16 AM on 20 February 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 payment of rent in the amount of \$2200.00,
 - An order for a payment of utilities in the amount of \$2812.82,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the \$1100.00 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*, 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 him by telephone at the commencement 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 respondents fail 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 the tenant was served with the application, by e-mail, on 04 February 2023, and a copy of that e-mail was also submitted with her 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 her application at the hearing and stated that she was now seeking a total claim of rent in the amount of \$4400.00.

Issue 1: Rent Owing - \$4400.00

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 05 June 2021, and a copy of that executed lease was submitted with her application. The agreed rent is set at \$2200.00, due on the 5th day of each month, and the landlord stated that the tenant had also paid a \$1100.00 security deposit.
9. The landlord submitted rent records with her application showing the payments the tenant had made since he had moved into the unit in 2021. According to these records, the tenant's rent was paid and up-to-date for the period ending 04 January 2023. The landlord testified, though, that the tenant had not paid his rent for the period beginning 05 January 2023, nor for the following rental period beginning 05 February 2023.
10. The landlord is seeking an order for a payment of rent for those 2 periods, a total of \$4400.00.

Analysis

11. I accept the testimony and evidence of the landlord in this matter, and I find that the tenant has not paid his rent for the rental periods commencing 05 January and 05 February 2023.
12. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she 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 \$3357.28 (\$2200.00 owing for the rental period ending 04 February 2023 and \$1157.28 for the rental period beginning 05 February 2023 (\$2200.00 per rental period x 12 periods = \$26,400.00 per year ÷ 365 days = \$72.33 per day x 16 days)).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$3357.28.
14. The tenant shall pay a daily rate of rent in the amount of \$72.33, beginning 21 February 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Utilities - \$2812.82

Relevant Submissions

15. The landlord stated that the tenant was responsible for paying his own utilities during his tenancy, and he was required to have the electricity account and the heating oil account switched into his name when he moved into the property.
16. With respect to the heating oil, the landlord stated that the tenant did not have the account put into his name until March 2022, almost 9 months after he had moved in, and during that time, as the landlord had an auto-fill agreement with her oil company, the oil tank was continuously topped up, and the landlord was charged for the tenant's oil consumption during that period.
17. With her application, the landlord submitted 5 invoices from her oil company showing that she was billed \$2812.82 during that 9 month period. The landlord is seeking an order for a payment in that amount.

Analysis

18. The lease submitted by the landlord clearly states that the tenant is responsible for the costs of heating the rental unit, and I accept her evidence which shows that she was billed for the heating oil the tenant consumed during the first 9 months of his tenancy. As these invoices total \$2812.82, the landlord's claim succeeds in that amount.

Decision

19. The landlord's claim for a payment of utilities succeeds in the amount of \$2812.82.

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

20. With her application, the landlord submitted a copy of a termination notice which she stated she had e-mailed to the tenant on 11 January 2023. That notice was

issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 22 January 2023.

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

Analysis

22. 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.

23. According to the landlord's records, on 11 January 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$2200.00, and he had been in arrears for exactly 5 days. No payments were made by the tenant after the notice was issued, and since then the rent for the rental period beginning 05 February 2023 has also come due.
24. 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

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

26. 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 4: Security Deposit

27. The landlord stated that the tenant had paid a security deposit of \$1100.00 on 03 June 2021. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

28. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

29. The landlord is entitled to the following:

- A payment of \$5090.10, determined as follows:
 - a) Rent Owing\$3357.28
 - b) Utilities\$2812.82
 - c) Hearing Expenses.....\$20.00
 - d) **LESS: Security Deposit..... (\$1100.00)**
 - e) Total.....\$5090.10
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$72.33, beginning 21 February 2023 and continuing to the date the landlord obtains vacant 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.

02 March 2023

Date

John R. Cook
Residential Tenancies Tribunal