

Residential Tenancies Tribunal

Application 2023 No. 87NL

Decision 23-0087-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 20 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", were not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$2500.00,
 - An order for vacant possession of the rented premises,
 - Authorization to retain the \$900.00 security deposit, and
 - An order for a payment of hearing expenses in the amount of \$20.00.

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

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents' absence so long as they have been properly served. The landlord submitted an affidavit with his application stating the tenants were served with the application, by e-mail, on 01 February 2023, and a copy of that e-mail was also submitted with his application. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Rent Owing - \$2500.00

Relevant Submissions

7. The landlord stated that he had entered into a monthly rental agreement with the tenants on 01 May 2022. The agreed rent was set at \$1250.00 per month, and the landlord testified that the tenants had paid a security deposit of \$900.00.
8. The landlord submitted rent records with his application showing the payments the tenants had made since they had moved into the unit. According to these records, the tenants' rent was paid and up-to-date for the period ending 31 December 2022. The landlord testified, though, that the tenants had not paid their rent for January or February 2023.
9. The landlord is seeking an order for a payment of rent for those 2 months, a total of \$2500.00.

Analysis

10. I accept the testimony and evidence of the landlord in this matter, and I find that the tenants have not paid their rent for January or February 2023.
11. 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 the amount owing to be \$2072.00 (\$1250.00 owing for January 2023 and \$822.00 for February 2023 (\$1250.00 per month x 12 months = \$15,000.00 per year ÷ 365 days = \$41.10 per day x 20 days)).

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$2072.00.
13. The tenants shall pay a daily rate of rent in the amount of \$41.10, beginning 21 February 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 e-mailed to the tenants on 01 February 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 12 February 2023.
15. The landlord stated that the tenants have not moved out, as required, and he 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 records, on 01 February 2023, the day the termination notice was issued, the tenants were in arrears in the amount of \$1250.00, and they had been in arrears for a full month. No payments were made by the tenants after the notice was issued, and since then the rent for the February 2023 has also 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 tenants 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 stated that the tenants had paid a security deposit of \$900.00 on 02 April 2022. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

22. 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

23. The landlord is entitled to the following:
 - A payment of \$1192.00, determined as follows:

a)	Rent Owing	\$2072.00
b)	Hearing Expenses.....	\$20.00
c) LESS: Security Deposit.....		(\$900.00)
d)	Total.....	<u>\$1192.00</u>
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of \$41.10, beginning 21 February 2023 and continuing to the date the landlord obtains vacant possession of the rental unit,

- The tenants 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.

27 February 2023

Date

John R. Cook
Residential Tenancies Tribunal