

## Residential Tenancies Tribunal

Application 2023 No. 156NL

Decision 23-0156-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 2:02 PM on 21 March 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 \$3750.00, and
  - 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 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 her 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 his application stating the tenant was served with the application, by registered mail, on 01 March 2023. The associated tracking history shows that the tenant never did collect that mail, and it was returned to the landlord on 21 March 2023. Section 42.(6) of the *Residential Tenancies Act, 2018* states that where an application is sent by registered mail, it is considered to have been served on the fifth day after mailing—in this case, on 06 March 2023. 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 his application at the hearing and stated that he was now seeking a total claim of rent in the amount of \$3050.00.

### **Issue 1: Rent Owing - \$3050.00**

#### **Relevant Submissions**

8. The landlord stated that he took over managing this property from his father in 2018. He stated that the tenant had been residing at the unit for some time at that point, which he estimated to be about 8 years. The current rent is set at \$700.00, and the landlord stated that the tenant had probably paid a \$300.00 security deposit when she moved in.
9. With his application, the landlord submitted a copy of his rent records showing the payments he had received from the tenant since January 2022. He stated that prior to that date, the tenant's rent was paid and up-to-date.
10. At the beginning of 2022, the rent was set at \$650.00 and these records show that for the first 5 months of that year, the tenant paid no rent whatsoever. The landlord testified that he had an agreement with the tenant that, starting in June 2022, she would pay an additional \$350.00 per week to pay off the arrears that had accumulated to that point. The records show that the landlord did receive some extra rent in the months of June, July and August 2022, but in September 2022, he only received \$650.00, even though the rent had increased to \$700.00 at that point, and he only received \$325.00 in October 2022. The records show that no rent had been paid for December 2022, January 2023 or February 2023.
11. Since these records were submitted, rent for March 2023 has also come due, and the landlord testified that he had received a payment from the tenant, on 18 March 2023, in the amount of \$1400.00. He calculates that the tenant currently owes him 3050.00, and he is seeking an order for a payment of that amount.

## Analysis

12. I accept the testimony and evidence of the landlord in this matter, and based on the submitted records, I find that the tenant had been carrying rental arrears since January 2022, which had accumulated to \$3750.00 for the period ending 28 February 2023.
13. 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 \$2833.21 (\$3750.00 owing for the rental period ending 28 February 2023, less a rent credit of \$916.76cr for March 2023 (\$700.00 per month x 12 months = \$8400.00 per year ÷ 365 days = \$23.01 per day x 21 days = \$483.21, less the payment of \$1400.00 received on 18 March 2023)).

## Decision

14. The landlord's claim for a payment of rent succeeds in the amount of \$2833.21.
15. The tenant shall pay a daily rate of rent in the amount of \$23.01, beginning 22 March 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

## Issue 2: Vacant Possession of Rented Premises

## Relevant Submissions

16. With his application, the landlord submitted a copy of a termination notice which he stated he had placed in the tenant's mailbox on 03 February 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 14 February 2023.
17. The landlord stated that the tenant has not moved out, as required, and he is seeking an order for vacant possession of the rented premises.

## Analysis

18. 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.*

19. According to the landlord's records, on 03 February 2023, the day the termination notice was issued, the tenant was in arrears in the amount of \$3750.00, and had been in arrears since January 2022. No payments were made by the tenant prior to the termination date of 14 February 2023.
20. 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**

21. The landlord's claim for an order for vacant possession of the rented premises succeeds.
22. 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**

23. The landlord stated that the tenant had probably paid a security deposit of \$300.00 to his father when the tenancy first began. 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**

24. The landlord paid a fee of \$20.00 to file this application and he submitted a receipt showing that he was charged \$15.73 to serve the tenant with the application by registered mail. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

## **Summary of Decision**

25. The landlord is entitled to the following:

- A payment of \$2568.94, determined as follows:

a) Rent Owing .....	\$2833.21
b) Hearing Expenses.....	\$35.73
c) LESS: Security Deposit..... (\$300.00)	
d) Total .....	<u>\$2568.94</u>
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$23.01, beginning 22 March 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.

27 March 2023

\_\_\_\_\_  
Date

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John R. Cook  
Residential Tenancies Tribunal